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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |   |
|------------------------|---|
| Proceeding             | 92025859  |
| Party                  | Defendant<br>General Cigar Co., Inc.  |
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| Date                   | 05/03/2021  |
| Attachments            | General Cigar Motion to Strike Rebuttal Disclosure.pdf(87468 bytes )<br>Deutsch Decl ISO Motion to Strike.pdf(6015632 bytes )   |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309  
For the mark COHIBA  
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273  
For the mark COHIBA  
Date registered: June 6, 1995

|                                   |   |                           |
|-----------------------------------|---|---------------------------|
| -----                             | X |                           |
| EMPRESA CUBANA DEL TABACO, d.b.a. | : |                           |
| CUBATABACO,                       | : |                           |
|                                   | : |                           |
| Petitioner,                       | : |                           |
|                                   | : | Cancellation No. 92025859 |
| v.                                | : |                           |
| GENERAL CIGAR CO., INC.           | : |                           |
|                                   | : |                           |
| Respondent.                       | : |                           |
|                                   | : |                           |
|                                   | : |                           |
| -----                             | X |                           |

**RESPONDENT GENERAL CIGAR CO. INC.'S MOTION TO STRIKE PETITIONER'S  
REBUTTAL TRIAL EVIDENCE AND TESTIMONY OF DEAN J. GLUTH, CHARLES  
LINEHAN, AND SUSAN BAILEY**

## INTRODUCTION AND PRELIMINARY STATEMENT

Pursuant to 37 C.F.R. § 2.123(e)(3), TBMP §§ 527, 533, and 707.03, and Rules 26 and 37 of the Federal Rules of Civil Procedure, Respondent General Cigar Co., Inc. (“Respondent” or “General Cigar”) respectfully moves to strike the testimony and exhibits contained in the Rebuttal Trial Declarations (the “Rebuttal Declarations”) of Dean J. Gluth, Charles Linehan, and Susan Bailey (collectively the “Rebuttal Witnesses”), which have been filed by Petitioner Empresa Cubana del Tabaco d/b/a Cubatabaco (“Petitioner” or “Cubatabaco”) (307-308, 326 TTABVUE).

The Affidavits should be stricken because the evidence introduced in the Rebuttal Affidavits is not proper rebuttal. Cubatabaco uses the Rebuttal Declarations to bolster or otherwise patch holes supporting its Sixth Cancellation Ground for likelihood of confusion under Lanham Act § 2(d). However, Cubatabaco is the cancellation petitioner here. As such, Cubatabaco bore the burden of submitting evidence during its case-in-chief that would show that the confusion factors of *In re E.I. duPont de Nemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973) favor its position. The evidence in the Rebuttal Declarations is not rebuttal – that is, evidence offered to rebut or explain away General Cigar’s own evidence. Rather, it is evidence on the confusion issue that (a) was available to Cubatabaco before the start of its trial period and could have been submitted in the case-in-chief, or (b) is merely cumulative of Cubatabaco’s already filed trial evidence.

The subjects covered in the Rebuttal Declarations, such as the channels of trade for and pricing of General Cigar COHIBA cigars, were already known to Cubatabaco as a result of discovery, and nothing in the Rebuttal Declarations contradicts or provides a different explanation for facts contained in General Cigar’s own trial evidence. Evidence on whether COHIBA cigars are sold in convenience stores, what prices are charged for such cigars, downloads of online

discussions about COHIBA cigars, and posting cigar-related questions to search engines could easily have been generated in 2019 and included in Cubatabaco's trial declarations. Similar facts as to retail sales and online/social media postings were in fact already included in those trial declarations, so the information in the Bailey Rebuttal Declaration is at most cumulative. Even if Cubatabaco responds that some of the evidence was "newly discovered," that is no excuse. A petitioner may not submit new evidence for its case-in-chief in rebuttal: its remedy is to convince the Board to reopen the trial period. Reopening is a procedure that is rarely granted, and Cubatabaco cannot meet the high burden imposed on a party seeking to reopen.

An independent ground supports striking the Rebuttal Declarations of Gluth and Linehan, who are investigators who visited and made purchases of General Cigar COHIBA cigars at convenience stores – because their identity and the subject matter of their testimony should have been, but was not, revealed in Cubatabaco's pretrial disclosures, if not its initial disclosures. This failure to timely disclose prejudiced General Cigar, which could have otherwise conducted its own investigation before deposing the rebuttal witnesses. Moreover, because Cubatabaco waited to disclose these investigators until its rebuttal period, General Cigar cannot introduce any of its own evidence to rebut or explain away the evidence submitted as part of these two declarations.

## **PROCEDURAL HISTORY AND STATEMENT OF RELEVANT FACTS**

The undersigned counsel declares that the following factual statements are true and correct.

### **Procedural History**

The Board's familiarity with the lengthy procedural history of this action will be assumed and is summarized below only as relevant to this Motion. The Board originally granted summary judgment dismissing Respondent's Amended Petition. This Order was reversed by the Federal

Circuit, and the cancellation proceeding was remanded for further proceedings. (TTABVUE Nos. 61 (Amended Petition to Cancel), 64 (General Cigar's Motion for Summary Judgment), 84 (Mandate of the U.S. Court of Appeals for the Federal Circuit) and 88 (Board's Order Vacating its Order of March 14, 2013 and Resuming Proceedings).)

Following the resumption of proceedings before the Board on October 28, 2015, the parties began a three-year discovery period that finally closed on August 6, 2018. *See* 131 TTABVUE 9. The Sixth Ground for Cancellation of Petitioner's Amended Petition for Cancellation asserts that one of General Cigar's registrations for the COHIBA mark is likely to cause confusion, and should be cancelled under Sections 2(d) and 14 of the Lanham Act. 61 TTABVUE 29. Cubatabaco took extensive discovery directed entirely to the confusion issue, including depositions of numerous General Cigar witnesses, and General Cigar produced many thousands of documents. The Board suspended proceedings three times to resolve motions and reset discovery and trial deadlines in issuing its decisions on the motions. (TTABVUE Nos. 94, 121, 125). In addition, deadlines were extended on consent five separate times (TTABVUE Nos 91, 96, 103, 106, 108). Ultimately, the Board issued a revised trial schedule under which Cubatabaco's 30-day trial period ended on September 16, 2019. (156 TTABVUE 7, 165 TTABVUE 6).

Respondent Was Aware of Convenience Store Sales of and the Pricing for General Cigar COHIBA Cigars During Discovery

General Cigar is a manufacturer and seller of cigars sold to U.S. consumers, including the COHIBA-branded cigars that are at issue in this proceeding. In 2017, during the discovery period, Cubatabaco took depositions of a number of General Cigar's employee witnesses regarding how General Cigar's COHIBA cigars are distributed to the public. Among the questions that Cubatabaco asked of every General Cigar deponent was whether General Cigar COHIBA cigars

are sold at retail convenience stores and whether those retailers used displays to promote General Cigar's Cohiba cigar. Each General Cigar witness answered yes or that such sales were possible:

On **September 26, 2017**, General Cigar's then Senior Brand Manager, Steven Abbot testified:

Q. Are General Cigar's Cohiba cigars sold at retail stores such as tobacco stores, liquor stores, convenience stores?

\* \* \*

A. Yes.

Q. Are there any displays that accompany the sale of General Cigar's Cohiba cigars at those locations?

A. Yes.

(Declaration of Andrew L. Deutsch ("Deutsch Decl."), ¶ 3, Ex. 1 at 217:14-218:2.)

Two days later, on **September 28, 2017**, General Cigar's then Director of Brand Marketing, Augustin Martinez testified:

Q. Are General Cigar's Cohiba cigars sold at retail stores such as tobacco stores, liquor stores, convenience stores?

A. Yes.

Q. Are there any displays that accompany the sale of General Cigar's Cohiba cigars at those locations?

A. At some, yes.

(Deutsch Decl., ¶ 4, Ex. 2 at 256:22-257:5.)

On **October 11, 2017**, General Cigar's then Brand Manager Andres Maturen Maal testified:

Q. Are General Cigar's Cohiba cigars sold at retail stores such as tobacco stores, liquor stores, convenience stores?

A. Within the US, yes.

Q. Are there any displays that accompany the sale of General Cigar's Cohiba cigars at those locations?

A. Yes.

(Deutsch Decl., ¶ 5, Ex. 3 at 223:21-224-6.)

On **October 17, 2017**, General Cigar's then Director of Public Relations and Digital Media Victoria McKee Jaworski testified:

Q. Are General Cigar's Cohiba cigars sold at retail stores such as tobacco stores, liquor stores, convenience stores?

A. Yes.

Q. Are there any displays that accompany the sale of General Cigar's Cohiba cigars at those locations?

A. I would assume so, yes.

(Deutsch Decl., ¶ 6, Ex. 4 at 147:9-16.)

On **November 2, 2017**, General Cigar's Vice President of Sales, Eugene Richter testified in his personal capacity:

Q. I believe you indicated that General Cigar sells its Cohiba cigars at retail stores and liquor stores; is that correct?

A. That's correct.

Q. Does it also sell General Cigar's Cohiba cigars at convenience stores -- to your knowledge?

A. Not to my knowledge, we don't have per se direct convenience store accounts. That's not to say that there could be cigars of any brand in a convenience store that come through distributors.

(Deutsch Decl., ¶ 7, Ex. 5 at 127:8-19.)

Two weeks after that, on **November 16, 2017**, Cubatabaco elicited the same testimony yet again, this time from General Cigar's then brand manager, Edward Lahmann:

Q. In between 2006 and 2014, were General Cigar's Cohiba cigars sold at retail stores such as tobacco stores, liquor stores, convenience stores? ... To your knowledge?

A. Yes.

Q. Do you know if between -- in that timeframe, there were any displays that accompanied the sale of General Cigar's Cohiba cigars at those locations? I think you mentioned some of them before, I forget how you termed them, but materials that would be near the cigar boxes or other point of sale materials?

A. Yes. Yes.

(Deutsch Decl., ¶ 8, Ex. 6 at 102:10-103:1.)

On November 21, 2017, Eugene Richter, testifying as General Cigar's corporate witness pursuant to Fed. R. Civ. P. 30(b)(6), stated under oath that General Cigar had both direct accounts, that is, wholesalers and retailers who purchase cigars directly from General Cigars, and indirect accounts, meaning retailers who purchase from a General Cigar direct account wholesaler, but

who have no sales relationship with General Cigar. (Deutsch Decl., ¶ 9, Ex. 7 at 107:8-108:10.) He further testified that “there are thousands and thousands of indirect accounts out there that are serviced by distributors,” including convenience stores (*Id.*, at 126:10-127:20), and that there are street corner bodegas, which may be considered convenience-type stores, that may sell COHIBA cigars. (*Id.*, at 355:20-356:18.)

Thus, prior to the opening of its trial testimony period, Cubatabaco knew that some General Cigar COHIBA cigars were being sold to US customers through convenience stores. There is no question that if Cubatabaco believed that such sales were germane to its claims in this proceeding, it could have sent investigators to make purchases of COHIBA cigars at convenience stores and take pictures of displays in stores, and provided the testimony of these investigators as evidence during its trial period. It chose not to do so.

In addition, Cubatabaco’s discovery depositions of General Cigar witnesses included questions about General Cigar’s suggested retail pricing for its COHIBA cigars. General Cigar’s witnesses responded with descriptions of the company’s Minimum Advertising Pricing Policy for its retail customers, its pricing for its Cohiba Blue cigar (*Id.*, ¶ 9, Ex. 7 at 181:20-184:12; 362:19-364:13) and the range of prices for Cohiba single cigars and whether this was greater than the average price point for U.S. cigars (*Id.*, ¶ 3, Ex. 1 at 295:2-13.) Prior to its trial period, Cubatabaco could have submitted evidence from investigators showing the prices charged by retail sellers for COHIBA cigars at specific stores and the displays in those stores. It chose not to do so.

#### Cubatabaco’s Pretrial Disclosures and Investigator Trial Witnesses

Cubatabaco’s trial period opened on September 6, 2018. *See* 131 TTABVUE 9. Its pretrial disclosures were due on September 20, 2018. *See id.* Cubatabaco timely served Petitioner’s Pretrial Disclosures identifying 28 potential witnesses that it intended to or may take the testimony



from “if the need arises.” (Deutsch Decl. ¶ 10, Ex. 8.) Rebuttal Witnesses Gluth and Linehan were not identified in the Cubatabaco Pretrial Disclosures. (*See id.*) Rebuttal Witness Bailey was not identified in the Pretrial Disclosures, but was identified in Cubatabaco’s Supplemental Pretrial Disclosures, served on September 28, 2018. (*Id.*; *see also* Deutsch Decl. ¶ 11, Ex. 9.) Cubatabaco submitted a September 14, 2019 declaration of Ms. Bailey in its initial trial period which consisted largely of summaries of downloads from the Internet and exhibits showing those downloads. 221 TTABVUE.

Among the other witnesses identified in the Pretrial Disclosures were Thomas J. Reilly, Jill Brewer, Tom Bailey, David Girolami, and Kevin Gregg. (Deutsch Decl. ¶ 10, Ex. 8 at §§ 3-7.) During the trial period, Cubatabaco submitted declarations from each of these witnesses. (167 TTABVUE at 433-482.) Witnesses Girolami, Bailey, and Reilly identified themselves as professional investigators. (*Id.* at 433, 462, 466-467.) Witness Gregg identified himself as an attorney, and witness Brewer identified herself as a paralegal. 167 TTABVUE 473, 477.) Each witness’s declaration described having been retained by counsel for Cubatabaco and being directed to visit retail cigar stores and to speak with sales personnel at the stores about sales of General Cigar Cohiba cigars at the stores and whether Cuban Cohiba cigars could be purchased at the stores. (*Id.* at Girolami Decl. at 433-434) (visits to three Pennsylvania cigar stores); (*Id.* at Bailey Decl. at 462-463) (visits to three Pennsylvania cigar stores); (*Id.* at Reilly Decl. at 466-469) (visits to two New York cigar stores); (*Id.* at Gregg Decl. at 473-474 (visit to one Florida cigar store); (*Id.* at Brewer Decl. 477-478) (visit to one Missouri cigar store). These investigators could have been directed by Cubatabaco to make COHIBA cigar purchases at these stores, or to go to other types of stores, such as convenience stores, and make such purchases – then disclose

this investigation in its Pretrial Disclosures and submit the evidence in these witnesses' declarations. Cubatabaco gave no such direction to its investigators.

#### Cubatabaco's Rebuttal Declarations

On January 15, 2021, Cubatabaco served rebuttal disclosures, identifying in relevant part Gluth and Bailey. (Deutsch Decl. ¶ 12, Ex. 10.) These disclosures identified Gluth for the first time in the entire proceeding. (*Id.*) On January 16, 2021, Cubatabaco served supplemental rebuttal disclosures identifying Linehan for the first time in the entire proceeding. (*Id.* ¶ 13, Ex. 11.)

On February 12, 2021, Cubatabaco filed rebuttal Declarations of the Rebuttal Witnesses. 307 TTABVUE (Linehan), 308 TTABVUE (Bailey), and 326 TTABVUE (Gluth). On March 2, 2021, General Cigar timely filed Notices of Elections to cross-examine the Rebuttal Witnesses (328-330 TTABVUE) and informed Cubatabaco that it was taking the cross-examinations of the Rebuttal Witnesses under protest, reserving its right "to object to the receipt of the testimony in evidence" pursuant to 37 C.F.R. § 2.123(e)(3) for "lack of []proper disclosure" and to "strike their rebuttal trial testimonies as not disclosed as required by 37 C.F.R. § 2.121(e) and TBMP § 702.01." (*See* Deutsch Decl. ¶ 14, Ex. 12.)

On March 31, 2021, the parties had a telephone conference with Interlocutory Attorney Bukrinsky. During that telephone conference, General Cigar raised its request to file the instant motion to strike and Interlocutory Attorney Bukrinsky granted General Cigar's request.

General Cigar timely took the cross-examinations of the Rebuttal Witnesses under protest between March 26, 2021 and April 2, 2021. These cross-examinations confirmed General Cigar's suspicions that Cubatabaco's rebuttal disclosures were improper.

#### Summary of Rebuttal Declaration Testimony

Gluth is a private investigator. (*See* Deutsch Decl. ¶ 15, Ex. 13 at 10:8-14.) In January 2021, he got a call from Lindsey Frank, Cubatabaco’s counsel, providing him with a specific address of a small convenience store named Plaza Mini-Mart in Chicago, Illinois, and asking him to buy a General Cigar COHIBA cigar as well as take pictures. (*Id.* at 28:20-29:11.) General Cigar provided no evidence or testimony about this store in either discovery or its trial evidence. It was not included on the list of more than 3,500 direct customers of General Cigar products that was provided by Respondent in discovery and annexed to Respondent’s trial declaration of its Vice President of Sales, Gene Richter. (281 TTABVUE at 6-13, Annex A) At his deposition, Gluth confirmed that the “sum of [his] testimony is that [he is] aware of one convenience store on Lawrence Avenue in Chicago that had a box of Cohiba Blue cigars and sold [him] two cigars from that box on a given day.” (Deutsch Decl. ¶ 15, Ex. 13 at 59:18-24.)

Linehan is also a professional private investigator. (*Id.*, ¶ 16, Ex. 14 at 10:12-11:6.) His employer was contacted in January 2021 by Attorney Frank and asked to go to three convenience stores selected by Frank, and to buy cigars identified by Frank and take pictures of the businesses. (*Id.* at 25:24-26:11, 29:19-30:15.)

Bailey is a non-attorney staff member at the law firm that represents Cubatabaco in this Proceeding. She testified at her deposition that in January 2021, Attorney Frank asked her to go to specific websites to print public materials from the internet that Frank had identified. Frank wrote her Declaration, including many conclusory assertions as to the facts and whether they show confusion. (*Id.*, ¶ 17, Ex. 15 at 16:8-20:2; 33:17-34:8; 35:24-36:16; 41:2-6.) The 67 exhibits attached to Ms. Bailey’s Rebuttal Declaration are almost entirely Internet material that could have been downloaded before the close of Cubatabaco’s trial period and included in its trial declarations,

including social media posts, excerpts from magazines and websites, and the results of searches on Bing and Yahoo web search engines. (*See e.g.*, 308 TTABVUE at Exs. 35-36).

## **I. LEGAL ARGUMENT**

### **A. Cubatabaco's Rebuttal Testimony Is Not Proper Rebuttal Evidence.**

It is axiomatic that in Board Proceedings the “rebuttal testimony period is intended solely for the introduction of evidence or testimony that denies, explains, or discredits evidence adduced by the defendant.” *See e.g., Belden Inc. v. Berk-Tek LLC*, 805 F.3d 1064, 116 U.S.P.Q.2d 1869, 1883 (Fed. Cir. 2015); *Carefirst of Maryland Inc. v. FirstHealth of the Carolina Inc.*, 77 U.S.P.Q.2d 1492, 1498 (T.T.A.B. 2005); *Life Zone Inc. v. Middleman Group Inc.*, 87 U.S.P.Q.2d 1953, 1958 (T.T.A.B. 2008); *General Electric Co. v. Graham Magnetics Inc.*, 197 U.S.P.Q. 690, 692 n.5 (T.T.A.B. 1977) (explaining that the rebuttal period is “intended to be limited to denials, refutations, or explanations of Applicant’s/[Registrant’s] testimony and evidence.”).

The rebuttal period is not for petitioners to patch holes in or bolster their case-in-chief. The Board consistently strikes rebuttal evidence or testimony where the evidence was available to the petitioner during its trial period and could have been introduced in the case-in-chief. *See e.g., Carefirst of Maryland Inc. v. FirstHealth of the Carolina Inc.*, 77 U.S.P.Q.2d 1492, 1498 (T.T.A.B. 2005); *Rowell Laboratories, Inc. v. Canada Packers Inc.*, 215 U.S.P.Q. 523, 525 n.2 (T.T.A.B. 1982) (“material intended to buttress petitioner's case-in-chief...constituted improper rebuttal”); *American Meat Institute v. Horace W. Longacre, Inc.*, 211 U.S.P.Q. 712, 719 (T.T.A.B. 1981) (“[i]t is the general rule that a party plaintiff may in his case on rebuttal introduce facts and witnesses appropriate to deny, explain, or otherwise discredit the facts and witnesses adduced by the opponent, but not any facts or witnesses which might appropriately have been introduced during its case-in-chief to sustain its pleading” and thus “a plaintiff may not utilize its rebuttal

period to prove its case-in-chief or to shore up its principal case in light of a defendant's evidence"); *Capital City, LLC v. Select Brands LLC*, 2013 WL 5402086, at \*4-5 (T.T.A.B. Aug. 26, 2013) (striking rebuttal evidence as improper rebuttal where it was cumulative of the likelihood of confusion evidence introduced in plaintiff's case-in-chief) (Non-Precedential). By contrast, in *Tiffany Ferrara and Woodsnob, LLC v. Sebastianelli*, 2016 WL 2939093, at \*5 (T.T.A.B. Apr. 19, 2016) (Non-Precedential) the Board held that the "only proper rebuttal evidence" submitted by the plaintiff were averments that a specific website was active, which directly rebutted evidence introduced by the applicant that that specific website was not active.

The Sixth Ground for Cancellation of Petitioner's Amended Petition for Cancellation asserts that one of General Cigar's registrations for the COHIBA mark is likely to cause confusion, and should be cancelled under Sections 2(d) and 14 of the Lanham Act. 61 TTABVUE 29. Cubatabaco's investigator declarations, which provide evidence of sales and displays of cigars at convenience stores, address two factors of the likelihood of confusion analysis of *In re E.I. duPont deNemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973): the trade channels through which the parties' goods are sold, and the buyers to whom sales are made. It was incumbent on Cubatabaco, who bears the burden of proof on all *duPont* factors, to introduce this evidence on its case-in-chief. Cubatabaco's improper rebuttal evidence is similar to that in *Life Zone Inc. v. Middleman Grp., Inc.*, 87 U.S.P.Q.2d 1953, 1959 (T.T.A.B. 2008) where the Board struck rebuttal evidence directed to likelihood of confusion factors because it was the "opposer which bears the burden of proof in this proceeding." The Board explained that this includes "the burden of proving what registrations or common-law trademarks it owns, the goods and services on or in connection with which it uses its mark, its channels of trade, its classes of customers, and any other information necessary to prevail."

Cubatabaco was required to “come forward with admissible evidence of [COHIBA cigar convenience store sales and pricing] during its case-in-chief” on the issue of confusion. *Id.* It learned about such sales in discovery. It had used other investigators to visit cigar retailers and submitted their testimony in its trial evidence. Before the close of its trial period, it could easily have used those investigators (or retained Gluth and Linehan) to make purchases at convenience stores and interact with the clerks. It could have submitted their declarations recounting their visits to stores during the trial period.<sup>1</sup> Because Cubatabaco failed to present this available information during its main trial period, the Board should strike the Gluth and Linehan Declarations as improper rebuttal.

Bailey’s Rebuttal Declaration should also be stricken. First, the witness is a paralegal with no knowledge of the case’s underlying facts, who was simply directed by her attorney employer to go to and download information from certain websites and social media platforms. The Bailey Rebuttal Declaration (“BRD”), written by Cubatabaco’s lawyer (Deutsch Decl. ¶ 17, Ex. 15 at 16:8-20:2; 33:17-34:8; 35:24-36:16; 41:2-6.), contains numerous conclusions of law and fact which the witness is not qualified to give. *See, e.g.*, 308 TTABVUE ¶¶ 2(a), 3-10 (scattered social media and webpage posts allegedly show “actual confusion”); ¶17-24 (asserting that scattered webpages show that U.S. cigar retailers “associated General Cigar COHIBA Cigar with Cuba and the Cuban Cohiba Cigar”; ¶ 42 (block capital lettering of General Cigar COHIBA allegedly is similar to letter of Cuban Cohiba cigar).

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<sup>1</sup> General Cigar’s trial witnesses did not mention the particular stores to which Cubatabaco directed its investigators and those stores were not on General Cigar’s lists of its direct accounts produced in discovery, so the Gluth and Linehan declarations cannot be rebuttal: their evidence did not deny, explain, or attempt to discredit any trial evidence presented by General Cigar.

Many of the exhibits to the BRD are improper rebuttal because they are cumulative of the Internet and social media downloads already introduced by Cubatabaco, in its trial declarations (including from Bailey at 221 TTABVUE), such as:

- Statements about the General Cigar COHIBA cigar on websites (*compare* 221 TTABVUE at ¶¶ 3-31 (Bailey’s Trial Declaration), reproducing printouts from websites of eighteen cigar retailers, *with* 308 TTABVUE at ¶¶ 3, 17-18, 22, 24 (BRD) (reproducing description of General Cigar COHIBA cigar on cigar store websites).
- Videos and printouts of social media and Internet sites, including Facebook and Instagram posts, addressing the use of “Cohiba,” even though Cubatabaco had already submitted similar posts in its trial evidence (*compare* 200-201 TTABVUE (Declaration of Shkumbin Mustafa) at ¶¶ 2-3, 7, 11-12 (reproducing Instagram posts); 4-6 (Facebook posts), 8 (Twitter posts), *with* 308 TTABVUE (BRD) at ¶¶ 6-9, 28-34 (reproducing user Reddit posts), 10-12 (Twitter posts).)

Most of the Internet and social media evidence annexed to the BRD existed before the close of Petitioner’s trial period on September 16, 2019, and could have been submitted in its trial evidence. *See, e.g.*, 308 TTABVUE at ¶ 4 (forum discussion dated August 9-12, 2019); ¶ 6 (Reddit post dated October 2, 2018); ¶ 8 (Reddit post dated June 10, 2018); ¶ 9 (Reddit post dated April 21, 2018); ¶¶ 12-15 (Twitter posts dated in 2017); ¶ 19 (Instagram post dated June 7, 2019); 20 (Instagram post dated September 17, 2019); ¶ 23 (excerpts from magazine dated Fall/Winter 2016); ¶¶ 28-30, 34 (Reddit posts dated January 15, 2015, June 27, 2015, October 16, 2016, March 17, 2018, respectively); ¶ 39d. (article related to 2016 U.S. Desktop Search Engine Rating). The BRD also contained web searches conducted by the witness in 2021 through the Bing and Yahoo search engines. *Id.* at ¶¶ 35-38. These search engines existed during Petitioner’s trial period and

Cubatabaco's law firm could have had its paralegal perform the same searches on Bing and Yahoo prior to the end of its trial period and included such searches in its trial evidence. The same is true for the data in the BRD about how many times certain inquiries about cigars were made to search engines (*Id.* at ¶ 26), and the percentage share that these engines have of the overall U.S. search market. (*Id.* at ¶ 39).

In addition, Bailey testified that in 2021, as directed by Attorney Frank, she purchased a few alleged General Cigar COHIBA cigars on the Internet auction site CigarBid and reported the pricing of the purchases in her Declaration. (¶ 41). However, CigarBid was in business well before the close of Cubatabaco's trial period. See <http://www.cigarasylum.com/vb/showthread.php?t=66341> (2014 post asking if others had experience with CigarBid). It is clear that Cubatabaco could have directed Bailey to purchase COHIBA cigars on CigarBid in 2019 and report what she found in its trial evidence. The same is true for Bailey's 2021 downloading from the Internet pictures of the label of the COHIBA Comador and Edicion Diamante COHIBA cigars (308 TTABVUE (BRD) ¶ 42), which could have been done at an earlier date.

Finally, even the exhibits to the Bailey Rebuttal Declaration that post-date the close of the trial period may not be introduced as rebuttal evidence. TBMP § 509.01(b) (citing *Rowell Laboratories, Inc. v. Canada Packers Inc.*, 215 U.S.P.Q. 523, 529 n.2 (T.T.A.B. 1982) (improper to attempt to introduce newly discovered evidence by way of rebuttal testimony). To introduce this evidence, Cubatabaco would have had to move to reopen its trial period and submit the evidence as trial, not rebuttal evidence. It would also have to show that it could not have discovered the evidence earlier through the exercise of reasonable diligence." *Rowell Laboratories, Inc.*, 215 U.S.P.Q. at 529 n.2; see also *Harjo v. Pro-Football Inc.*, 45 U.S.P.Q.2d



1789, 1998 WL 90884, at \*2 (T.T.A.B. 1998) (denying request to reopen trial period based on information purportedly learned after the close of trial period and setting forth a four-factor test for evaluating reopening motions: (1) the nature and purpose of the evidence sought to be added, (2) the stage of the proceeding, (3) the adverse party's right to a speedy and inexpensive determination of the proceeding, and (4) the need for closure once the trial period has been completed.)

None of these factors favor reopening the trial period and allowing Cubatabaco to submit this evidence. Beyond the late stage of the proceeding, the prejudice to General Cigar, and the need to bring this case to its long-delayed close, reopening should be denied because the type of evidence Cubatabaco seeks to introduce through the Rebuttal Witnesses is cumulative, and in any event, has minimal probative value. TMBP § 708.04(b) (“The probative value of Internet documents is limited”); *see Harjo*, 1998 WL 90884, at \*2 (denying request to reopen proceedings where the materials sought to be introduced were largely “cumulative”, “redundant” and did not have significant probative value to justify further delay of the case which had been pending at that point for 6 years); *The Explorers Club v. The Jupiter River Inn, Inc. AKA The Explorers Vacation Club*, Opp. No. 91238351, 2019 WL 4897007, at \*2 (T.T.A.B. Oct. 2, 2019) (denying request to reopen proceedings where further delay would not affect outcome of the case, but would significantly impact efficient judicial administration of the case); *Chanel, Inc. v. Mauriello*, Canc. No. 92046246, 2010 WL 3873650, at \*3 (T.T.A.B. Sept. 20, 2010) (“While it is true that the evidence only became available after the close of trial, the new evidence does not warrant reopening the proceeding. It is similar to other evidence already submitted...”) The Board applied similar principles when Cubatabaco moved to strike General Cigar’s supplemental expert report and the Board granted the motion:

Addressing factors two and three, Petitioner's ability to cure the surprise of the Supplemental Report is significantly diminished because the discovery period closed nearly two years ago... Reopening discovery at this late stage in this twenty-three year old proceeding would cause further disruption and delay. Furthermore, allowing Mr. Hacker to testify as to the additional facts without reopening discovery would require Petitioner to continue with trial and conduct cross-examination of Mr. Hacker from a 23 247 TTABVUE 7. Cancellation No. 92025859 13 disadvantageous standpoint despite Petitioner's prior deposition of Mr. Hacker regarding the Original Report. Accordingly, these factors also weigh in favor of Petitioner.

(250 TTABVUE 12-13.)

In summary, none of Petitioner's so-called rebuttal evidence is true rebuttal. All of it is either cumulative of what was already submitted in Cubatabaco's trial Declarations or could have been presented by Cubatabaco, which bears the burden of proof on confusion, in its trial Declarations. Any newly-discovered evidence may not be submitted as rebuttal evidence. Consistent with its well-settled precedent, the Board should strike the entire testimony in all of Cubatabaco's Rebuttal Declarations.

**B. Cubatabaco's Rebuttal Investigators Were Improperly Disclosed.**

In addition, two of Cubatabaco's rebuttal witnesses – investigators Gluth and Linehan – should have been disclosed in Cubatabaco's Pretrial Disclosures, if not earlier. Even if these two Rebuttal Witnesses offered permissible rebuttal testimony— and they did not—they were not properly and timely disclosed to General Cigar. Cubatabaco's failure to timely disclose these witnesses are not justified and have prejudiced General Cigar. Accordingly, their Declarations and exhibits should be stricken on this independent ground.

Gluth and Lineman were not (i) disclosed in Cubatabaco's Initial Disclosures; (ii) identified in any of Cubatabaco's written discovery responses or interrogatories; (iii) identified in any documents Cubatabaco produced during discovery; (iv) disclosed in Cubatabaco's Pretrial Disclosures; or (v) even contacted by Cubatabaco until mid-January 2021. (Deutsch Decl. ¶¶ 10-

13, Exs. 8-11, ¶ 15, Ex. 13 at 25:6-18, ¶ 16, Ex. 14 at 16:3-9.) The Investigators were disclosed for the first time in Cubatabaco's January 15, 2021 and January 16, 2021 rebuttal and supplemental rebuttal. (Deutsch Decl. ¶¶ 10-13, Exs. 8-11.)

Each party to an *inter partes* proceeding must serve initial disclosures that identify “*each individual* likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.” *See* Fed. R. Civ. P. 26(a)(1); Trademark Rules 2.116(a) and 2.120(a)(2) (Board emphasis). Additionally, the Board has stated that, unless seasonably remedied, a party's failure to identify a witness in its initial disclosures deprives the adverse party of the opportunity to seek discovery of the identified witness, and this fact “must [be] consider[ed] ... as one of the relevant circumstances ... in determining whether to strike [the witness's] testimony deposition.” *Jules Jurgensen/rhapsody, Inc. v. Peter Baumberger*, 91 U.S.P.Q.2d 1443, 1444-45 (T.T.A.B. 2009); *Spier Wines (Pty) Ltd. v. Ofer Z. Shepherd*, 105 U.S.P.Q.2d 1239 (T.T.A.B. 2012). To determine whether Cubatabaco's failure to disclose Gluth and Linehan until its Rebuttal Disclosures was substantially justified or harmless, the Board is guided by the following five-factor test: “1) the surprise to the party against whom the evidence would be offered; 2) the ability of that party to cure the surprise; 3) the extent to which allowing the testimony would disrupt the trial; 4) importance of the evidence; and 5) the non-disclosing party's explanation for its failure to disclose the evidence.” *See Spier Wines (Pty) Ltd.*, 105 U.S.P.Q.2d 1239, 1243 (T.T.A.B. 2012) (quoting *Great Seats*, 100 U.S.P.Q.2d 1323, 1327 (T.T.A.B. 2011)).

Regarding the first factor, General Cigar was surprised by the disclosures of the investigators during the rebuttal period for the reasons outlined above. On the second and third factors, General Cigar cannot cure the surprise caused by Cubatabaco's inexplicably late

disclosures of the investigators. While General Cigar was able to cross-examine the investigators on statements made in their Rebuttal Declarations (307, 326 TTABVUE), it was denied the opportunity to do its own investigation and submit evidence in its trial period regarding, for example: (i) whether the stores visited by the investigators were downstream retailers of General Cigar direct accounts; (ii) whether the stores had licenses to sell tobacco products; (iii) the volume of COHIBA and other tobacco sales in the stores; and (iv) whether consumers were confused by the displays in the stores. Waiting to identify such witnesses until rebuttal is improper sandbagging. *See e.g., Pepsico, Inc.*, No. 91187023, 2013 WL 8456132, at \*2 (Jan. 7, 2013) (denying rebuttal disclosures where witnesses were not previously disclosed and opposing party did not have an opportunity to take discovery related to the witnesses, which would unreasonably cause discovery to reopen when the proceeding was pending for four years). Moreover, as noted above, the prejudice to General Cigar could not be cured without reopening the trial periods, and to do so at this point in this very old case would cause substantial disruption and delay.

Regarding the fourth factor, “[i]n determining the importance of the evidence or testimony to the fair adjudication of the proceedings, the Board will consider various factors, including whether the testimony is cumulative or if evidence can be introduced by other means, and whether the proposed testimony would be admissible.” (250 TTAVUE at 13) (quoting *Spier Wines*, 105 U.S.P.Q.2d at 1244).) Here, as shown above, there is no doubt that the evidence submitted by the investigators are cumulative and redundant to evidence about retail sales of COHIBA cigars already submitted by Cubatabaco during its trial period

Regarding the fifth factor, Cubatabaco has not offered an explanation for its late disclosure of the investigators and their visits to convenience stores. From all appearances, the stores visited were in existence years before Cubatabaco’s trial period ended. Petitioner could have sent

investigators to them at that time and identified those investigators in their pretrial disclosures. Petitioner failed to act diligently, and it should not be allowed to patch this hole in its trial evidence by belated service of incomplete Rebuttal Disclosures.

Weighing all the factors, Cubatabaco's failure to disclose the two investigators until its rebuttal period was not substantially justified and is not harmless. Accordingly, the Board should strike their trial testimony and evidence on the separate ground of non-disclosure.

## **II. CONCLUSION**

For the reasons stated above, General Cigar respectfully requests that the Board grant this motion and strike all testimony and evidence submitted in connection with Cubatabaco's Rebuttal Witnesses.

Dated: May 3, 2021

Respectfully submitted,

By: /s/ Andrew L. Deutsch

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York, New York 10020-1104  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
*Attorneys for General Cigar Co., Inc*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I have caused to be served a true and correct copy of the foregoing: RESPONDENT GENERAL CIGAR CO. INC.'S MOTION TO STRIKE THE REBUTTAL TRIAL EVIDENCE AND TESTIMONY OF MR. DEAN J. GLUTH, CHARLES LINEHAN, AND SUSAN BAILEY by transmitting copies by electronic mail dated March 2, 2021, to Petitioner's counsel:

Michael Krinsky  
Lindsey Frank  
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.  
14 Wall Street, 30th Floor  
New York, NY 10005  
(212) 254 - 1111  
[mkrinsky@rbskl.com](mailto:mkrinsky@rbskl.com)  
[lfrank@rbskl.com](mailto:lfrank@rbskl.com)  
*Attorneys for Petitioner, Empresa Cubana del Tabaco, d.b.a. Cubatabaco*

Date: May 3, 2021

/s/ Joshua Schwartzman





produced in discovery or otherwise exchanged between counsel for Petitioner and counsel for Respondent that are relevant to decision of the Motion.

3. A true and correct copy of excerpts to the September 26, 2017 Deposition of Steven Abbot is attached hereto as **Exhibit 1**.

4. A true and correct copy of excerpts to the September 28, 2017 Deposition of Augustin Martinez is attached hereto as **Exhibit 2**.

5. A true and correct copy of excerpts to the October 11, 2017 Deposition of Andres Maturen Maal is attached hereto as **Exhibit 3**.

6. A true and correct copy of excerpts to the October 17, 2017 Deposition of Victoria McKee Jaworski attached hereto as **Exhibit 4**.

7. A true and correct copy of excerpts to the November 2, 2017 Deposition of Eugene Paul Richter is attached hereto as **Exhibit 5**.

8. A true and correct copy of excerpts to the November 16, 2017 Deposition of Edward Lahmann is attached hereto as **Exhibit 6**.

9. A true and correct copy of excerpts to the November 21, 2017 Rule 30(b)(6) Deposition of Eugene Paul Richter is attached hereto as **Exhibit 7**.

10. A true and correct copy of Cubatabaco's pretrial disclosures, dated September 20, 2018, is attached hereto as **Exhibit 8**.

11. A true and correct copy of Cubatabaco's supplemental pretrial disclosures, dated September 28, 2018, is attached hereto as **Exhibit 9**.

12. A true and correct copy of Cubatabaco's rebuttal disclosures, dated January 15, 2021 attached hereto as **Exhibit 10**.

13. A true and correct copy of Cubatabaco's supplemental rebuttal disclosures, dated January 16, 2021 attached hereto as **Exhibit 11**.

14. A true and correct copy of correspondence between counsel for General Cigar and counsel for Cubatabaco dated March 2, 2021, is attached hereto as **Exhibit 12**.

15. A true and correct copy of excerpts to the March 29, 2021 deposition of Dean Gluth is attached hereto as **Exhibit 13**.

16. A true and correct copy of excerpts to the March 31, 2021 deposition of Charles Linehan is attached hereto as **Exhibit 14**.

17. A true and correct copy of excerpts to the April 2, 2021 deposition of Susan Bailey is attached hereto as **Exhibit 15**.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 3, 2021

/s/ Andrew L. Deutsch  
ANDREW L. DEUTSCH

# **Exhibit 01**

1       IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2       BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
3       In the matter of Trademark Registration No. 1147309  
4       For the mark COHIBA  
5       Date Registered: February 17, 1081  
6       AND  
7       In the matter of the Trademark Registration No: 1898273  
8       For the mark COHIBA  
9       Date Registered: June 6, 1995  
10      - - - - - x  
11      EMPRESA CUBANA DEL TABACO,       :  
12      d.b.a. CUBATABACO,               :  
13                                      Petitioner,       :  
14              v.                         :  
15      GENERAL CIGAR CO., INC. and       :  
16      CULBRO CORP.,                    :  
17                                      Respondents.     :  
18      - - - - - x  
19                                      Deposition of STEVEN ABBOT  
20                                      Richmond, Virginia  
21                                      Tuesday, September 26, 2017  
22                                      9:03 a.m.

1 Job No.: 161806

2 Pages: 1 - 346

3 Reported By: Leslie D. Etheredge, RMR, CCR

4  
5  
6 Deposition of STEVEN ABBOT, held at the offices  
7 of:

8  
9 ECKERT SEAMANS CHERIN & MELLOTT

10 919 East Main Street, Suite 1300

11 Richmond, Virginia 23219

12 804.788.7740  
13  
14  
15  
16

17 Pursuant to Notice, before Leslie D.  
18 Etheredge, Registered Merit Reporter, Certified  
19 Court Reporter and Notary Public in and for the  
20 Commonwealth of Virginia.  
21  
22

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

LINDSEY FRANK, ESQUIRE

RABINOWITZ, BOUDIN, STANDARD, KRINSKY &

LIEBERMAN

45 Broadway, Suite 1700

New York, New York 10006

212.254.1111

ON BEHALF OF THE RESPONDENTS:

ANDREW L. DEUTSCH, ESQUIRE

DLA PIPER US LLP

2000 Avenue of the Stars, Suite 400

Los Angeles, California 90067

212.335.4880

1           Q.    Is there any statement on any  
2    advertisements for General Cigar's Cohiba cigars  
3    indicating that they're not associated with the  
4    Cuban Cohiba cigar?

5           A.    Not during my time responsible for the  
6    brand.

7           Q.    Do you know if there ever was such a  
8    statement?

9           A.    Not to my knowledge.

10          Q.    Other than with counsel, legal counsel,  
11   to your knowledge, were there ever any discussions  
12   at General Cigar about adding such a statement?

13          A.    Not to my knowledge.

14          Q.    Are General Cigar's Cohiba cigars sold  
15   at retail stores such as tobacco stores, liquor  
16   stores or convenience stores?

17          A.    I am sorry. Can you repeat the  
18   question?

19                    (Last question read back)

20          A.    Yes.

21          Q.    Are there any displays that accompany  
22   the sale of General Cigar's Cohiba cigars at these

1 locations?

2 A. Yes.

3 Q. Is General Cigar responsible for the  
4 content of these displays?

5 A. Yes.

6 Q. Are there any statements on any of these  
7 displays indicating that General Cigar's Cohiba  
8 cigar is not associated with the Cuban Cohiba  
9 cigar?

10 A. No.

11 Q. Were there -- To your knowledge, were  
12 there ever any such statements in the past?

13 A. Not to my knowledge.

14 Q. Other than with legal counsel, do you  
15 know of any discussions at General Cigar about  
16 adding such a statement?

17 A. Not to my knowledge.

18 Q. Do you know what a -- well, you can keep  
19 that one out.

20 Does General Cigar's Facebook page have  
21 a section titled milestones?

22 A. I believe so.



1 Cohiba cigars.

2 Q. What is the typical price point of a  
3 single Cohiba cigar as of the date of this  
4 document, which I guess was 2016?

5 A. Anywhere between \$14 to \$20 per cigar.

6 Q. That's a single cigar?

7 A. Correct.

8 Q. Is that a -- where in the range of  
9 cigars available in the United States does that  
10 stand in terms of price point?

11 MR. FRANK: Objection.

12 A. That would be well above the normal  
13 average price point of just below \$10.

14 Q. Would you characterize the Cohiba cigar  
15 made by General Cigar as an impulse buy item?

16 A. No.

17 Q. Would you characterize it as an item  
18 that consumers spend some time thinking about  
19 before making it?

20 MR. FRANK: Objection.

21 A. Yes.

22 Q. I will show you Exhibit 6, which you

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, LESLIE D. ETHEREDGE, Registered Merit  
3 Reporter, Certified Court Reporter and Notary  
4 Public within and for the State of Virginia, do  
5 hereby certify:

6 That STEVEN ABBOT, the witness whose  
7 deposition is hereinbefore set forth, was duly  
8 sworn by me before the commencement of such  
9 deposition and that such deposition was taken  
10 before me and is a true record to the best of my  
11 ability of the testimony given by such witness.


12 I further certify that the adverse  
13 party, General Cigar Co., Inc. and Culbro Corp.  
14 was represented by counsel at the deposition.

15 I further certify that the deposition of  
16 STEVEN ABBOT occurred at the offices of ECKERT  
17 SEAMANS CHERIN & MELLOTT, 919 East Main Street,  
18 Suite 1300, Richmond, Virginia on Tuesday,  
19 September 26, 2017, commencing at 9:03 a.m. to  
20 6:41 p.m.

21 I further certify that I am not related  
22 to any of the parties to this action by blood or

1 marriage, I am not employed by or an attorney to  
2 any of the parties to this action, and that I am  
3 in no way interested, financially or otherwise, in  
4 the outcome of this matter.

5 IN WITNESS WHEREOF, I have hereunto set  
6 my hand this 27th day of September, 2017.

7  
8   
9 LESLIE D. ETHEREDGE, Notary Public in  
10 and for the Commonwealth of Virginia  
11 Registration No: 116406  
12 My commission expires February 28, 2019  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

# **Exhibit 02**



1 Job No.: 161806

2 Pages: 1 - 370

3 Reported By: Leslie D. Etheredge, RMR, CCR

4  
5  
6 Deposition of AUGUSTIN MARTINEZ, III, held at  
7 the offices of:

8  
9 ECKERT SEAMANS CHERIN & MELLOTT

10 919 East Main Street, Suite 1300

11 Richmond, Virginia 23219

12 804.788.7740  
13  
14  
15  
16

17 Pursuant to Notice, before Leslie D.  
18 Etheredge, Registered Merit Reporter, Certified  
19 Court Reporter and Notary Public in and for the  
20 Commonwealth of Virginia.  
21  
22

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

LINDSEY FRANK, ESQUIRE

RABINOWITZ, BOUDIN, STANDARD, KRINSKY &

LIEBERMAN

45 Broadway, Suite 1700

New York, New York 10006

212.254.1111

ON BEHALF OF THE RESPONDENTS:

ANDREW L. DEUTSCH, ESQUIRE

DLA PIPER US LLP

2000 Avenue of the Stars, Suite 400

Los Angeles, California 90067

212.335.4880

1 Q. Is it on the Cohiba Blue?

2 A. I do not believe so.

3 Q. Is it on the Cohiba Luxury Selection?

4 A. I do not believe so.

5 Q. Is it on the Cohiba Black?

6 A. I do not believe so.

7 Q. Is it on Cohiba Macassar?

8 A. Macassar, no, I do not believe so.

9 Q. Can you identify any other cigar line of  
10 Cohiba that includes Dominican Republic on the  
11 band?

12 A. Puro Dominicana was the one that I was  
13 thinking of.

14 Q. But there is no others that you can  
15 recall?

16 A. No, sir.

17 Q. Is there any statement on any  
18 advertisement for General Cigar's Cohiba cigar  
19 indicating that its Cohiba cigars are not  
20 associated with the Cuban Cohiba cigar?

21 A. Not that I'm aware of.

22 Q. Are General Cigar's Cohiba cigars sold



1 at retail stores such as tobacco stores, liquor  
2 stores, convenience stores?

3 A. Yes.

4 Q. Are there any displays that accompany  
5 the sale of General Cigar's Cohiba cigars at those  
6 locations?

7 A. At some, yes.

8 Q. Is there any statement on any of those  
9 displays indicating that General Cigar's Cohiba  
10 cigars are not associated with the Cuban Cohiba  
11 cigar?

12 A. Not that I'm aware of.

13 Q. Do you know what a Facebook page name  
14 is?

15 A. No. A -- I don't know if there is a --

16 Q. Do you know if there is ever a point at  
17 which General Cigar -- strike that.

18 Does General Cigar's Cohiba Facebook  
19 page -- strike that.

20 Does General Cigar's Cohiba Facebook  
21 page have a page name, to your knowledge?

22 A. I -- Cohiba cigars, is that what you are

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, LESLIE D. ETHEREDGE, Registered Merit  
3 Reporter, Certified Court Reporter and Notary  
4 Public, within and for the State of Virginia, do  
5 hereby certify:

6 That AUGUSTIN MARTINEZ, III, the witness whose  
7 deposition is hereinbefore set forth, was duly  
8 sworn by me before the commencement of such  
9 deposition and that such deposition was taken  
10 before me and is a true record to the best of my  
11 ability of the testimony given by such witness.

12 I further certify that the adverse  
13 party, General Cigar Co., Inc. and Culbro Corp.  
14 was represented by counsel at the deposition.

15 I further certify that the deposition of  
16 AUGUSTIN MARTINEZ, III occurred at the offices of  
17 ECKERT SEAMANS CHERIN & MELLOTT, 919 East Main Street,  
18 Suite 1300, Richmond, Virginia on Thursday,  
19 September 28, 2017, commencing at 9:02 a.m. to  
20 5:52 p.m.

21 I further certify that I am not related  
22 to any of the parties to this action by blood or

1 marriage, I am not employed by or an attorney to  
2 any of the parties to this action, and that I am  
3 in no way interested, financially or otherwise, in  
4 the outcome of this matter.

5 IN WITNESS WHEREOF, I have hereunto set  
6 my hand this 27th day of September, 2017.

7  
8   
9

10 LESLIE D. ETHEREDGE, Notary Public in  
11 and for the Commonwealth of Virginia  
12 Registration No: 116406

13 My commission expires February 28, 2019  
14  
15  
16  
17  
18  
19  
20  
21  
22

# **Exhibit 03**

1       IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
2       BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
3       In the matter of Trademark Registration No. 1147309  
4       For the mark COHIBA  
5       Date Registered: February 17, 1081  
6       AND  
7       In the matter of Trademark Registration No: 1898273  
8       For the mark COHIBA  
9       Date Registered: June 6, 1995  
10      - - - - - x  
11      EMPRESA CUBANA DEL TABACO,       :  
12      d.b.a. CUBATABACO,               :  
13                                      Petitioner,       :  
14      v.                                :  
15      GENERAL CIGAR CO., INC. and       :  
16      CULBRO CORP.,                    :  
17                                      Respondents.       :  
18      - - - - - x  
19                                      HIGHLY CONFIDENTIAL  
20                                      Deposition of ANDRES MATUREN MAAL  
21                                      Richmond, Virginia  
22                                      Wednesday, October 11, 2017  
                                      9:00 a.m.

1 Job No.: 162165

2 Pages: 1 - 296

3 Reported By: Leslie D. Etheredge, RMR, CCR

4  
5  
6 Deposition of ANDRES MATUREN MAAL, held at  
7 the offices of:

8  
9 ECKERT SEAMANS CHERIN & MELLOTT  
10 919 East Main Street, Suite 1300  
11 Richmond, Virginia 23219  
12 804.788.7740  
13  
14  
15  
16

17 Pursuant to Notice, before Leslie D.  
18 Etheredge, Registered Merit Reporter, Certified  
19 Court Reporter and Notary Public in and for the  
20 Commonwealth of Virginia.  
21  
22

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

LINDSEY FRANK, ESQUIRE

RABINOWITZ, BOUDIN, STANDARD, KRINSKY

& LIEBERMAN

45 Broadway, Suite 1700

New York, New York 10006

212.254.1111

ON BEHALF OF THE RESPONDENTS:

AIRINA LYNN RODRIGUES, ESQUIRE

DLA PIPER LLP (US)

1251 Avenue of the Americas

New York, New York 10020

212.335.4673

1 of the Cohiba ones have those inserts.

2 Q Do you recall any statement on any insert  
3 for a Cohiba cigar box that would include a  
4 statement indicating that the Cohiba cigar,  
5 General Cigar's Cohiba cigar is not associated  
6 with the Cuban Cohiba cigar?

7 A No, I don't recall any specifics on that.

8 Q Do you remember any discussions within  
9 General Cigar about adding such a statement?

10 A No, I don't recall that discussion.

11 Q Is there a statement on any advertisement  
12 for General Cigar's Cohiba cigars indicating that  
13 they're not associated with the Cuban Cohiba  
14 cigar?

15 A Since I been Brand Manager, I don't recall  
16 any statement of that nature in advertising.

17 Q Do you recall any discussions at General  
18 Cigar about adding such a statement?

19 A I don't recall any statement -- discussion  
20 about that. I am sorry.

21 Q Are General Cigar's Cohiba cigars sold at  
22 retail stores such as tobacco stores, liquor



1 stores, convenience stores?

2 A Within the US, yes.

3 Q Are there any displays that accompany the  
4 sale of General Cigar's Cohiba cigars at these  
5 locations?

6 A Yes.

7 Q Are there any statements on any of these  
8 displays indicating that General Cigar's Cohiba  
9 cigars are not associated with the Cuban Cohiba  
10 cigars?

11 A Not that I know of.

12 Q Were there discussions at General Cigar  
13 about adding such a statement?

14 A I don't recall any discussion.

15 Q Have you ever had any conversations within  
16 General Cigar about images on General Cigar's  
17 Facebook, Twitter, Instagram accounts that show  
18 images of Cuban Cohiba cigars?

19 A I don't recall any conversation about  
20 that, no.

21 Q Do you recall any conversations with  
22 Moosylvania about posts or comments to General

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, LESLIE D. ETHEREDGE, Registered Merit  
3 Reporter, Certified Court Reporter and Notary  
4 Public within and for the State of Virginia, do  
5 hereby certify:

6 That ANDRES MATUREN MAAL, the witness  
7 whose deposition is hereinbefore set forth, was  
8 duly sworn by me before the commencement of such  
9 deposition and that such deposition was taken  
10 before me and is a true record to the best of my  
11 ability of the testimony given by such witness.


12 I further certify that the adverse party,  
13 General Cigar Co., Inc. and Culbro Corp., was  
14 represented by counsel at the deposition.

15 I further certify that the deposition of  
16 ANDRES MATUREN MAAL occurred at the offices of  
17 ECKERT SEAMANS CHERIN & MELLOTT, 919 East Main  
18 Street, Suite 1300, Richmond, Virginia on  
19 Wednesday, October 11, 2017, commencing at 9:00  
20 a.m. to 5:16 a.m.

21 I further certify that I am not related to  
22 any of the parties to this action by blood or

1 marriage, I am not employed by or an attorney to  
2 any of the parties to this action, and that I am  
3 in no way interested, financially or otherwise, in  
4 the outcome of this matter.

5 IN WITNESS WHEREOF, I have hereunto set my  
6 hand this 16th day of October, 2017.

7  
8   
9 LESLIE D. ETHEREDGE, Notary Public in  
10 and for the Commonwealth of Virginia  
11 Registration No: 116406  
12 My commission expires February 28, 2019  
13  
14  
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# **Exhibit 04**

1  
2 UNITED STATES PATENT AND TRADEMARK OFFICE  
3 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

4 In the matter of  
5 Trademark Registration No. 1147309  
6 For the mark COHIBA  
Date registered: June 6, 1995

7 -----  
8 EMPRESA CUBANA DEL TABACO,  
d/b/a CUBATABACO,

9 Petitioner,

10 vs.

11 GENERAL CIGAR CO., INC. and  
12 CULBRO CORP.,

13 Respondents.  
14 -----

15 HIGHLY CONFIDENTIAL

16 DEPOSITION OF VICTORIA MCKEE JAWORSKI

17  
18 Friday, October 13, 2017

19 10:00 a.m.  
20  
21  
22

23 Reported by:

24 Joan Ferrara, RPR, RMR, CRR

25 Job No. JO653984

October 13, 2017  
10:00 a.m.

New York, New York

Deposition of VICTORIA McKEE

JAWORSKI, held at the offices of Rabinowitz  
Boudin Standard Krinsky & Lieberman, P.C.,  
61 Broadway, New York, New York, Pursuant  
to Notice, before Joan Ferrara, a  
Registered Professional Reporter,  
Registered Merit Reporter, Certified  
Realtime Reporter, and Notary Public of the  
State of New York.

1  
2 A P P E A R A N C E S:

3  
4 RABINOWITZ BOUDIN STANDARD KRINSKY &  
5 LIEBERMAN, P.C.

6 Attorneys for Petitioner

7 61 Broadway

8 New York, New York 10006

9 BY: LINDSEY FRANK, ESQ.

10 lfrank@rbskl.com  
11  
12

13 DLA PIPER LLP (US)

14 Attorneys for Respondent

15 1251 Avenue of the Americas

16 New York, New York 10020-1104

17 BY: AIRINA LYNN RODRIGUES, ESQ.

18 airina.rodrigues@dlapiper.com  
19  
20

21 ALSO PRESENT:

22 Josh Schwartzman  
23  
24  
25

1 V. McKee Jaworski - Highly Confidential  
2 statement indicating that General Cigar's  
3 Cohiba cigars are not associated with the  
4 Cuban Cohiba cigars?

5 MS. RODRIGUES: Objection.

6 BY MR. FRANK:

7 Q. To your knowledge.

8 A. To my knowledge, no.

9 Q. Are General Cigar's Cohiba cigars  
10 sold at retail stores such as tobacco  
11 stores, liquor stores or convenience  
12 stores?

13 A. Yes.

14 Q. Are there any displays that  
15 accompany the sale of General Cigar's  
16 Cohiba cigars at those locations?

17 A. I would assume so, yes.

18 Q. To your knowledge, are there any  
19 statements on any of those displays  
20 indicating that the General Cigar's Cohiba  
21 cigar is not associated with the Cuban  
22 Cohiba cigar?

23 A. To my knowledge, no.

24 Q. Previously you had testified that  
25 you had, one of your responsibilities was



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C E R T I F I C A T E

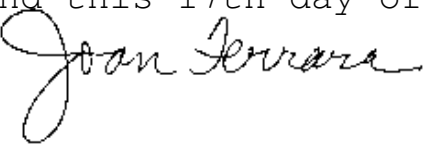
STATE OF NEW YORK       )  
                                      : ss.  
COUNTY OF NEW YORK    )

I, Joan Ferrara, a Notary Public  
within and for the State of New York,  
do hereby certify:

That VICTORIA McKEE JAWORSKI, the  
witness whose deposition is  
hereinbefore set forth, was duly sworn  
by me and that such deposition is a  
true record of the testimony given by  
the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I  
am in no way interested in the outcome  
of this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this 17th day of  
October, 2017.

  
\_\_\_\_\_

Joan Ferrara

# **Exhibit 05**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date Registered: February 17, 1081

AND

In the matter of Trademark Registration No: 1898273

For the mark COHIBA

Date Registered: June 6, 1995

— — — — — X

EMPRESA CUBANA DEL TABACO, :

d.b.a. CUBATABACO, :

Petitioner, :

$$V. \quad \quad \quad \vdots$$

GENERAL CIGAR CO., INC. and :

CULBRO CORP., :

Respondents. :

— — — — — X

HIGHLY CONFIDENTIAL

Deposition of EUGENE PAUL RICHTER, III

Richmond, Virginia

Thursday, November 2, 2017, 9:00 a.m.

1 Job No.: 164366

2 Pages: 1 - 153

3 Reported By: Leslie D. Etheredge, RMR, CCR

4  
5  
6 Deposition of EUGENE PAUL RICHTER, III, held  
7 at the offices of:

8  
9 ECKERT SEAMANS CHERIN & MELLOTT  
10 919 East Main Street, Suite 1300  
11 Richmond, Virginia 23219  
12 804.788.7740  
13  
14  
15  
16

17 Pursuant to Notice, before Leslie D.  
18 Etheredge, Registered Merit Reporter, Certified  
19 Court Reporter and Notary Public in and for the  
20 Commonwealth of Virginia.  
21  
22

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

LINDSEY FRANK, ESQUIRE

RABINOWITZ, BOUDIN, STANDARD, KRINSKY

& LIEBERMAN

45 Broadway, Suite 1700

New York, New York 10006

212.254.1111

ON BEHALF OF THE RESPONDENTS:

AIRINA LYNN RODRIGUES, ESQUIRE

DLA PIPER LLP (US)

1251 Avenue of the Americas

New York, New York 10020

212.335.4673

1           A   On the Red Dot band, product of  
2   Dominicana, but that's it, no.

3           Q   To your knowledge, are there any  
4   statements on any advertisements for General  
5   Cigar's Cohiba cigars indicating that they're not  
6   associated with the Cuban Cohiba cigar?

7           A   Not to my knowledge.

8           Q   I believe you indicated that General Cigar  
9   sells its Cohiba cigars at retail stores and  
10   liquor stores; is that correct?

11          A   That's correct.

12          Q   Does it also sell General Cigar's Cohiba  
13   cigars at convenience stores --

14           MS. RODRIGUES:  Objection to form.

15          Q   -- to your knowledge?

16          A   Not to my knowledge, we don't have per se  
17   direct convenience store accounts.  That's not to  
18   say that there could be cigars of any brand in a  
19   convenience store that come through distributors.

20          Q   To your knowledge, are there any displays  
21   that accompany the sale of General Cigar's Cohiba  
22   cigars at either the retail locations or the

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, LESLIE D. ETHEREDGE, Registered Merit  
3 Reporter, Certified Court Reporter and Notary  
4 Public within and for the State of Virginia, do  
5 hereby certify:

6 That EUGENE PAUL RICHTER, III, the witness  
7 whose deposition is hereinbefore set forth, was  
8 duly sworn by me before the commencement of such  
9 deposition and that such deposition was taken  
10 before me and is a true record to the best of my  
11 ability of the testimony given by such witness.


12 I further certify that the adverse party,  
13 General Cigar Co., Inc. and Culbro Corp. was  
14 represented by counsel at the deposition.

15 I further certify that the deposition of  
16 EUGENE PAUL RICHTER, III occurred at the offices  
17 of ECKERT SEAMANS CHERIN & MELLOTT, 919 East Main  
18 Street, Suite 1300, Richmond, Virginia on  
19 Thursday, November 2, 2017, commencing at 9:00  
20 a.m. to 1:29 p.m.

21 I further certify that I am not related to  
22 any of the parties to this action by blood or

1 marriage, I am not employed by or an attorney to  
2 any of the parties to this action, and that I am  
3 in no way interested, financially or otherwise, in  
4 the outcome of this matter.

5 IN WITNESS WHEREOF, I have hereunto set my  
6 hand this 14th day of November, 2017.

7  
8   
9 LESLIE D. ETHEREDGE, Notary Public in  
10 and for the Commonwealth of Virginia  
11 Registration No: 116406  
12 My commission expires February 28, 2019  
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# **Exhibit 06**

1       IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE  
2                   THE TRADEMARK TRIAL AND APPEAL BOARD  
3       In the matter of Trademark Registration No. 1147309  
4       For the mark COHIBA  
5       Date Registered:   February 17, 1081  
6       AND  
7       In the matter of Trademark Registration No: 1898273  
8       For the mark COHIBA  
9       Date Registered:   June 6, 1995  
10      - - - - - x  
11           EMPRESA CUBANA DEL TABACO,       :  
12           d.b.a. CUBATABACO,               :  
13                           Petitioner,       :  
14                   v.                        :  
15           GENERAL CIGAR CO., INC.         :  
16           and CULBRO CORP.,               :  
17                           Respondents.     :  
18      - - - - - x  
19                           Deposition of EDWARD LAHMANN  
20                                   Richmond, Virginia  
21                                   Thursday, November 16, 2017  
22   8:30 a.m.

1 Job No.: 166210

2 Pages: 1 - 235

3 Reported By: Leslie D. Etheredge, RMR, CCR

4  
5  
6 Deposition of EDWARD LAHMANN, held at the offices  
7 of:

8  
9 ECKERT SEAMANS CHERIN & MELLOTT

10 919 East Main Street, Suite 1300

11 Richmond, Virginia 23219

12 804.788.7740  
13  
14  
15  
16

17 Pursuant to Notice, before Leslie D. Etheredge,  
18 Registered Merit Reporter, Certified Court Reporter  
19 and Notary Public in and for the Commonwealth of  
20 Virginia.  
21  
22

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

LINDSEY FRANK, ESQUIRE  
RABINOWITZ, BOUDIN, STANDARD,  
KRINSKY & LIEBERMAN  
45 Broadway, Suite 1700  
New York, New York 10006  
212.254.1111

ON BEHALF OF THE RESPONDENTS:

AIRINA LYNN RODRIGUES, ESQUIRE  
DLA PIPER LLP (US)  
1251 Avenue of the Americas  
New York, New York 10020  
212.335.4673

1 General Cigar Cohiba cigar was not licensed by the  
2 company that makes the Cuban Cohiba cigar?

3 A There was no statements that say that.

4 Q Do you know if, between 2006 and 2014,  
5 there were any statements on any advertisements for the  
6 General Cigar Cohiba cigar indicating that that cigar  
7 was not otherwise related to the company that makes the  
8 Cuban Cohiba cigar?

9 A No statements.

10 Q In between 2006 and 2014, were General  
11 Cigar's Cohiba cigars sold at retail stores such as  
12 tobacco stores, liquor stores, convenience stores?

13 MS. RODRIGUES: Objection to form.

14 Q To your knowledge?

15 A Yes.

16 Q Do you know if between -- in that time  
17 frame, there were any displays that accompanied the  
18 sale of General Cigar's Cohiba cigars at those  
19 locations?

20 I think you mentioned some of them before, I  
21 forget how you termed them, but materials that would be  
22 near the cigar boxes or other point of sale materials?

1           A           Yes. Yes.

2           Q           Do you know if any of those materials  
3 included a statement indicating that the General Cigar  
4 Cohiba cigar was not associated with the Cuban Cohiba  
5 cigar?

6           A           No, there is nothing on those pieces like  
7 that.

8           Q           Do you recall -- Do you know if during that  
9 time period, there was ever any statement on any of  
10 those materials indicating that the General Cigar  
11 Cohiba cigar was not licensed by or otherwise related  
12 to the company that makes the Cuban Cohiba cigar?

13          A           No.

14          Q           Do you recall any discussions at General  
15 Cigar about adding such a statement or disclaimer?

16          A           No.

17          Q           Do you know what a Facebook page name is?

18                   MS. RODRIGUES: Objection.

19          A           Yes.

20          Q           What is a Facebook page name?

21          A           It is the search function that you use to  
22 find what you are looking for, whether a person or a

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, LESLIE D. ETHEREDGE, Registered Merit Reporter,  
3 Certified Court Reporter and Notary Public within and  
4 for the State of Virginia, do hereby certify:

5 That EDWARD LAHMANN, the witness whose  
6 deposition is hereinbefore set forth, was duly sworn by  
7 me before the commencement of such deposition and that  
8 such deposition was taken before me and is a true  
9 record to the best of my ability of the testimony given  
10 by such witness.

11 I further certify that the adverse party,  
12 GENERAL CIGAR CO., INC., was represented by counsel at  
13 the deposition.

14 I further certify that the deposition of  
15 EDWARD LAHMANN occurred at the offices of ECKERT  
16 SEAMANS CHERIN & MELLOTT, 919 East Main Street, Suite  
17 1300, Richmond, Virginia on Thursday,  
18 November 16, 2017, commencing at 8:30 a.m. to 4:10 p.m.

19 I further certify that I am not related to  
20 any of the parties to this action by blood or marriage,  
21 I am not employed by or an attorney to any of the  
22 parties to this action, and that I am in no way

1 interested, financially or otherwise, in the outcome of  
2 this matter.

3 IN WITNESS WHEREOF, I have hereunto set my  
4 hand this 20th day of November, 2017.

5   
6 LESLIE D. ETHEREDGE, Notary Public in and  
7 for the Commonwealth of Virginia

8 Registration No: 116406

9 My commission expires February 28, 2019  
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# **Exhibit 07**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date Registered: February 17, 1081 AND

In the matter of Trademark Registration No: 1898273

For the mark COHIBA

Date Registered: June 6, 1995

-----X

EMPRESA CUBANA DEL TABACO, :

d.b.a. CUBATABACO, :

Petitioner, :

$$V_{\bullet} \quad \quad \quad \begin{matrix} \cdot \\ \cdot \end{matrix}$$

GENERAL CIGAR CO., INC. and :

CULBRO CORP., :

Respondents. :

— — — — — X

Deposition of GENERAL CIGAR CO., INC.

By and through its Designated Representative

EUGENE PAUL RICHTER, III

Richmond, Virginia

Tuesday, November 21, 2017 at 9:07 a.m.

1 Job No.: 164368

2 Pages: 1 - 381

3 Reported By: Leslie D. Etheredge, RMR, CCR

4  
5  
6 Deposition of EUGENE PAUL RICHTER, III, held at  
7 the offices of:

8  
9 ECKERT SEAMANS CHERIN & MELLOTT

10 919 East Main Street, Suite 1300

11 Richmond, Virginia 23219

12 804.788.7740

13  
14  
15  
16  
17 Pursuant to Notice, before Leslie D.  
18 Etheredge, Registered Merit Reporter, Certified  
19 Court Reporter and Notary Public in and for the  
20 Commonwealth of Virginia.

A P P E A R A N C E S

ON BEHALF OF THE PETITIONER:

LINDSEY FRANK, ESQUIRE

RABINOWITZ, BOUDIN, STANDARD, KRINSKY

& LIEBERMAN

45 Broadway, Suite 1700

New York, New York 10006

212.254.1111

ON BEHALF OF THE RESPONDENTS:

AIRINA LYNN RODRIGUES, ESQUIRE

DLA PIPER LLP (US)

1251 Avenue of the Americas

New York, New York 10020

212.335.4673

1 MR. FRANK: Or purchasing. Sorry.

2 Purchasing. Sorry. Strike that.

3 Q Can you tell how much Palm Smoke Shop was  
4 purchasing the Cohiba Esplendidos for?

5 A Yes. \$55.

6 Q Were they \$55 each?

7 MS. RODRIGUES: Per -- there is no --

8 A Do you understand what you are looking at  
9 here, just out of curiosity? I know enough, this  
10 is out of procedure here, but do you understand  
11 what you are looking at here?

12 Q Can you describe to me what I am looking  
13 at?

14 A Do you understand? Because the  
15 question -- the line of questioning you are asking  
16 me leads me to believe you don't understand what  
17 you are looking for.

18 Q Can you --

19 A First, you asked what they sell it for.  
20 This is a wholesale invoice. That's what this is.  
21 What he has listed here is they have purchased  
22 supposedly two boxes of this product, product that

1 is not General Cigar Cohiba, let's go on record  
2 with that.

3 They have purchased it from Courtesy  
4 Wholesale. I don't know who Courtesy Wholesale  
5 is. There are thousands and thousands of General  
6 Cigar direct accounts out there. There are  
7 thousands and thousands of indirect accounts that  
8 buy product from a distributor like this  
9 particular Courtesy Wholesale. We don't know who  
10 Courtesy Wholesale is.

11 Q And do you know how much Palm Smoke Shop  
12 was selling the Cohiba Esplendidos for?

13 A I have no idea.

14 Q Do you know how many Cohiba Esplendidos  
15 were in the two boxes--

16 MS. RODRIGUES: Objection.

17 Q -- you testified to?

18 A I have no idea. There is no quantity  
19 listed on this invoice.

20 MR. FRANK: Let's mark this as GCC  
21 Exhibit 16, Bates GENC0024206 to 27207.

22

1 MS. RODRIGUES: Objection.

2 A I do not. I only know what the letter  
3 says.

4 Q You see here in the first paragraph, it  
5 complains about yellow band Cohiba cigars that  
6 this company has distributed to various retailers  
7 including convenience stores located along the  
8 Massachusetts Turnpike. Do you see that?

9 A I do.

10 Q Do you have any information about these  
11 convenience stores?

12 MS. RODRIGUES: Objection.

13 A I do not.

14 Q Or what their names are, location,  
15 clientele?

16 A I do not. As I testified earlier, there  
17 are thousands and thousands of indirect accounts  
18 out there that are serviced by distributors. We  
19 do not have a knowledge of every single retailer  
20 in the U.S. that sells cigars.

21 Q Yes, but General Cigar or its legal  
22 counsel has gone through the trouble of sending

1 out a cease and desist letter, so I am trying to  
2 find out if there is any specific information  
3 about these companies to which it has gone through  
4 the trouble of alleging infringement of their  
5 Cohiba trademark registration.

6 A I understand your question, but you asked  
7 me specifically about these convenience stores,  
8 and, again, there are thousands and thousands of  
9 retail outlets in the United States that are  
10 indirect accounts that are serviced potentially, I  
11 say potentially by a General Cigar direct account.

12 Not all indirect accounts are receiving  
13 product from a General Cigar direct account. An  
14 indirect account could be receiving that product  
15 from an account that is actually an indirect  
16 account from another account.

17 The product flow in the United States of  
18 cigars is like a spider web. When we identify  
19 situations, we take our best possible action to  
20 try to rectify those situations.

21 Q I understand that. I am trying to find  
22 out if you -- if General Cigar or its counsel



1 Q This says Document 10-5, Page 2 of 3, on  
2 the top.

3 A Yes, I can see it.

4 Q Can you see how much this website is  
5 selling the Cohiba Caribbean's Finest cigar for?

6 A It looks like our price, after a discount,  
7 it looks like is \$42.

8 Q For a box of 5?

9 A For a box of 5.

10 Q That would be about, what, 8.40 per cigar;  
11 is that correct?

12 A Roughly, yes. Salesman's math.

13 Q If you go to Exhibit M, the document --

14 A I would like to note that is significantly  
15 less than what a U.S. legal trademark of Cohiba  
16 would sell for in a fairly close like size,  
17 significantly less.

18 Q Is --

19 A Salesman's math.

20 Q How much does the Cohiba Blue sell for  
21 currently?

22 A Cohiba Blue was not in commerce at the

1 time.

2 Q Currently, how much does it sell for?

3 A It depends on the state you are in.

4 Q What is the lowest retail suggested price?

5 A Suggested retail price is going to be over  
6 ten dollars or ten dollars and above, and then,  
7 depending on the state, you have to include state  
8 sales tax, which the online people do not do here.

9 Q You are saying that's the lowest the  
10 General Cigar Cohiba cigar, retail suggested price  
11 for a Cohiba Blue is?

12 A Cohiba Blue, it is going to be greater  
13 than ten dollars.

14 Q Could it be ten dollars?

15 A It just depends.

16 Q Could it be below ten dollars?

17 A I would have to get my price list and do  
18 some calculations, I don't have that off the top  
19 of my head.

20 Q Could it be -- can cigar retailers --

21 A It will be greater than \$8 that is here.

22 Q Can I finish my question? Can cigar

1     retailers in the United States discount prices in  
2     addition to the -- discount prices from the  
3     suggested retail sales price?

4           A   We have a direct consumer pricing policy  
5     in play today that the Cohiba brand must follow.

6           Q   Can there be any discounts for Cohiba Blue  
7     cigars that are sold by cigar retailers in the  
8     United States?

9           A   Cigar Blue cigars must follow the direct  
10    consumer pricing policy.

11          Q   I understand, but can there be any  
12    discounts from the suggested retail price for  
13    Cohiba Blue cigars?

14          A   It is illegal for me to tell a retailer  
15    what they can sell directly their pricing to the  
16    consumer at, so as long as they follow our direct  
17    consumer pricing policy, it is a MAP, Minimum  
18    Advertising Pricing Policy, they can sell whatever  
19    they want, --

20          Q   What's the minimum --

21          A   -- so they can be above it.

22          Q   What's the Minimum Advertising Price --

1           A   20 percent above -- or excuse me --

2   25 percent above our factory selling price.

3           Q   What is the factory selling price for  
4   Cohiba Blue?

5           A   I don't have that off the top of my head.

6           Q   Do you know if there are any cigars on the  
7   market in the United States for -- any Cohiba Blue  
8   cigars on the market for the United States that  
9   sell for below ten dollars per cigar?

10          A   Again, I would have to go back and do the  
11   MAP and look at the MAP. I don't have that off  
12   the top of my head.

13          Q   Can you turn to Exhibit M, please.

14          MS. RODRIGUES:   M?

15          A   M as in Michael?

16          Q   M as in Michael, correct. Turn to the  
17   top, Document 10-40 -- 14. I am sorry. Page 5 of  
18   5.

19          MS. RODRIGUES:   Page 5 of 5?

20          A   Are you here?

21          Q   I am looking at the last page essentially.

22          A   Last page?

1 Cigar Afficinado is rating as the highest selling  
2 and best selling brands.

3 Q So other than your personal anecdotal  
4 experiences and the review of the documents  
5 that -- or the materials that you just identified,  
6 is there anything else that supports that  
7 statement?

8 A I don't have anything else.

9 Q Do you remember anything about the  
10 interactions you had with consumers that would  
11 support that statement, anything specifically?

12 A It is more just watching them when they  
13 check out at the store, watching what they're  
14 buying.

15 Q Do certain cigar consumers in the United  
16 States buy their cigars online, not at stores?

17 A Yes.

18 Q And via catalogs as well?

19 A Yes.

20 Q Are Cohiba cigars sold at -- are General  
21 Cigar Cohiba cigars sold at liquor stores?

22 A Yes.

1 Q Convenience stores?

2 A Not to my recollection. You should  
3 probably define for me what you mean by a  
4 convenience store, because your definition, living  
5 where you live, might be different from mine.

6 Q Well, other than a store dedicated solely  
7 to the sale of cigars or a liquor store, are  
8 General Cigar's Cohiba cigars sold at any other  
9 location?

10 A So, in my mind, a convenience store would  
11 be like Wawa, Sheetz, 7-Eleven, that's a chain  
12 convenience store. A convenience store may be to  
13 you might be the Bodega on the street corner, so  
14 there could be a humidor in that Bodega, which is  
15 not whatever grocery stores you have up there,  
16 Wegmans or whatever. So, to answer the question,  
17 yes, it could be in that type of outlet, a Bodega,  
18 if you consider that a convenience-type store.

19 There are thousands and thousands of  
20 stores out there that sell cigars, and we don't  
21 have direct relationships with most of the stores  
22 that sell cigars, those are coming through

1 A Just discussion.

2 Q Discussion with whom?

3 A Counsel.

4 Q Did counsel tell you that or is that your  
5 knowledge?

6 A That's my knowledge.

7 Q What is that knowledge based on?

8 A Discussion.

9 Q Have you seen -- have you ever seen a  
10 box --

11 A No, I have not seen --

12 Q -- of Cohiba Caribbean's Finest with  
13 Dominican Republic?

14 A I have not seen the box.

15 Q Do you know where on the box the Dominican  
16 Republic is identified? Is it the top, is it the  
17 bottom, is it the side?

18 A I do not know exactly.

19 Q I believe you testified about the Cohiba  
20 Blue cigar today; correct?

21 A I believe so.

22 Q Is that the least expensive Cohiba line of

1 cigar, General Cigar Cohiba line of cigars?

2 A That would be correct.

3 Q Is that the last line extension, the  
4 latest line extension that General Cigar --

5 A Actually, that wouldn't be correct. On a  
6 per cigar basis, the least expensive would be a  
7 Cohiba Pequenos.

8 Q And how much does a Cohiba Pequenos go  
9 for?

10 A Off the top of my head, on an  
11 individual cigar basis, it is a small cigar, so I  
12 am not comparing large cigars to large cigars, we  
13 have a large cigar and we have a small cigar; but  
14 if you are talking about large cigars, then yes,  
15 Cohiba Blue would be our least expensive in the  
16 lineup.

17 Q Is that the latest line of Cohiba cigars  
18 that General Cigar has released?

19 MS. RODRIGUES: Objection.

20 A Yes.

21 MS. RODRIGUES: Asked and answered. You  
22 did ask that question before; and I know you are



1 entitled to your redirect, but if you are going to  
2 ask the witness the same questions you asked on  
3 direct, I am going to have to terminate at some  
4 point.

5 Q Did you -- you were about to say how much  
6 the Cohiba Pequenos -- is that what --

7 A Off the top of my head, we'd have to get a  
8 price list out. I am just telling you it is a  
9 small cigar, so it is priced less expensive than a  
10 large cigar.

11 Q And it would be less expensive than the  
12 Cohiba Blue?

13 A Yes.

14 Q I believe Miss Rodrigues introduced a new  
15 exhibit, is that --

16 MR. FRANK: Miss Rodrigues, was that  
17 Exhibit 38? I don't have a copy of that. I was  
18 not presented with a copy.

19 A Yep.

20 Q Can you identify -- No, that's not it.  
21 The Cigar World, the quarterly report.

22 A It says 38.

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

2 I, LESLIE D. ETHEREDGE, Registered Merit  
3 Reporter, Certified Court Reporter and Notary  
4 Public within and for the State of Virginia, do  
5 hereby certify:

6 That EUGENE PAUL RICHTER, III, the witness  
7 whose deposition is hereinbefore set forth, was  
8 duly sworn by me before the commencement of such  
9 deposition and that such deposition was taken  
10 before me and is a true record to the best of my  
11 ability of the testimony given by such witness.


12 I further certify that the adverse party,  
13 General Cigar Co., Inc., was represented by  
14 counsel at the deposition.

15 I further certify that the deposition of  
16 EUGENE PAUL RICHTER, III occurred at the offices  
17 of ECKERT SEAMANS CHERIN & MELLOTT, 919 East Main  
18 Street, Suite 1300, Richmond, Virginia on Tuesday,  
19 November 21, 2017, commencing at 9:07 a.m. to 8:36  
20 p.m.

21 I further certify that I am not related to  
22 any of the parties to this action by blood or

1 marriage, I am not employed by or an attorney to  
2 any of the parties to this action, and that I am  
3 in no way interested, financially or otherwise, in  
4 the outcome of this matter.

5 IN WITNESS WHEREOF, I have hereunto set my  
6 hand this 29th day of November, 2017.

7  
8   
9 LESLIE D. ETHEREDGE, Notary Public in  
10 and for the Commonwealth of Virginia  
11 Registration No: 116406  
12 My commission expires February 28, 2019  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

# **Exhibit 08**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| -----                              | X |                           |
| EMPRESA CUBANA DEL TABACO, d.b.a.  | : |                           |
| CUBATABACO,                        | : |                           |
|                                    | : |                           |
| Petitioner,                        | : |                           |
|                                    | : | Cancellation No. 92025859 |
| v.                                 | : |                           |
|                                    | : |                           |
| GENERAL CIGAR CO., INC. and CULBRO | : |                           |
| CORP.                              | : |                           |
|                                    | : |                           |
| Respondents.                       | : |                           |

----- X

**PETITIONER’S PRETRIAL DISCLOSURES**

Pursuant to Federal Rules of Civil Procedure 26(a)(3) and 37 C.F.R. § 2.121(e), Petitioner *Empresa Cubana del Tabaco dba Cubatabaco* (“Petitioner”) hereby makes the following pretrial disclosures to Respondent of: (a) the name and the telephone number and address of each witness from whom it intends to take testimony, or may take testimony if the need arises, during its testimony period; (b) general identifying information about the witness, such as relationship to any party, including job title if employed by a party, or, if neither a party nor related to a party, occupation and job title (“General Identifying Information About the Witness”); (c) a general summary or list of subjects on which the witness is expected to testify, and (d) a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness.

Petitioner’s disclosures represent a good faith effort to identify information reasonably

believed to be required by the applicable rules. Petitioner reserves the right to supplement these disclosures.

**WITNESSES FROM WHOM PETITIONER MAY TAKE TESTIMONY**

Petitioner intends to take testimony, or may take testimony if the need arises, from the following witnesses:

1.

a. Name:

Lisset Fernández García

b. Telephone Number:

(53) (7) 204-0530

c. Address:

c/o Corporación Habanos, S.A.  
Centro de Negocios Miramar, Edificio Habana, Piso 3,  
Ave. 3ra esquina a 78,  
Miramar, Playa,  
La Habana, Cuba CP 11300

d. General Identifying Information About the Witness:

Ms. Fernández is the Legal Director of Corporación Habanos, S.A. and the Secretary of the *Junta General de Accionistas, Consejo de Administración* and *Comité de Dirección* of Corporación Habanos, S.A.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Ms. Fernandez is expected to testify as to any one or more of the following topics: any topic mentioned in the discovery deposition of Mr. Fernandez in this proceeding; the legal status of Petitioner and the relationship between Petitioner and Corporación Habanos, S.A.; the organization and operation of Corporación Habanos, S.A.; Petitioner's trademark registrations and applications in Cuba, the United States and the rest of the world; sales, export and promotion of the Cuban COHIBA cigar; Petitioner's legal contracts, agreements and licenses; pre-Revolution cigar brands; Petitioner's trademark enforcement actions; Petitioner's intentions regarding COHIBA for the territory of the United States when U.S. law

permits the sale of Cuban origin cigars; the supply and quality control of cigars offered or sold in connection with Cubatabaco's COHIBA mark; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents related to: any topic mentioned in the discovery deposition of Mr. Fernandez in this proceeding; the legal status of Petitioner and the relationship between Petitioner and Corporación Habanos, S.A.; the organization and operation of Corporación Habanos, S.A.; Petitioner's trademark registrations and applications in Cuba, the United States and the rest of the world; sales, export and promotion of the Cuban COHIBA cigar; Petitioner's legal contracts, agreements and licenses; pre-Revolution cigar brands; Petitioner's trademark enforcement actions; Petitioner's intentions regarding COHIBA for the territory of the United States when U.S. law permits the sale of Cuban origin cigars; and the supply and quality control of cigars offered or sold in connection with Cubatabaco's COHIBA mark; and other documents, if any, of the foregoing type.

2.

a. Name:

Enrique Babot Espinosa

b. Telephone Number:

(53) (7) 204-0530

c. Address:

c/o Corporación Habanos, S.A.  
Centro de Negocios Miramar, Edificio Habana, Piso 3,  
Ave. 3ra esquina a 78,  
Miramar, Playa,  
La Habana, Cuba CP 11300

d. General Identifying Information About the Witness:

Mr. Babot is currently the *Supervisor Internacional de Mercados* and formerly the *Director de Marketing Operativo* and *Director Comercial* (among other positions) at Corporación Habanos, S.A.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Babot is expected to testify as to any one or more of the following topics: any

topic mentioned in the discovery deposition of Mr. Babot in this proceeding; the production, marketing, advertising, promotion, sales and distribution of the Cuban COHIBA cigar and other Cuban cigars; interactions with the press; the different *vitolas* and sizes, prices, production, fame and awareness of the Cuban COHIBA cigar; pre-Revolution Cuban cigars; Petitioner's intentions regarding COHIBA for the territory of the United States when U.S. law permits the sale of Cuban origin cigars; injury that Petitioner has suffered, and will continue to suffer, from General Cigar's registration of the COHIBA trademark in the United States; confusion among United States consumers caused by General Cigar's use of the COHIBA mark; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents related to: any topic mentioned in the discovery deposition of Mr. Babot in this proceeding; the production, marketing, advertising, promotion, sales and distribution of the Cuban COHIBA cigar and other Cuban cigars; interactions with the press; the different *vitolas* and sizes, prices, production, fame and awareness of the Cuban COHIBA cigar; pre-Revolution Cuban cigars; Petitioner's intentions regarding COHIBA for the territory of the United States when U.S. law permits the sale of Cuban origin cigars; injury that Petitioner has suffered, and will continue to suffer, from General Cigar's registration of the COHIBA trademark in the United States; and confusion among United States consumers caused by General Cigar's use of the COHIBA mark; and other documents, if any, of the foregoing type.

3.

a. Name:

Thomas J. Reilly

b. Telephone Number:

(212) 737-3315

c. Address:

The Reilly International Group, Ltd.  
157 East 75<sup>th</sup> St., Suite 1E  
New York, NY 10021

d. General Identifying Information About the Witness:

Mr. Reilly is a private investigator and the President of The Reilly International Group, Ltd.



- e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Reilly is expected to testify as to the information contained in or related to documents Bates labelled as TR0000001-TR0000004; the documents identified below and other documents, if any, of this type.

- f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents Bates labelled as TR0000001-TR0000006; and other documents, if any, of the foregoing type.

4.

- a. Name:

Jill Brewer

- b. Telephone Number:

(314) 863-7733

- c. Address:

c/o Spencer Fane LLP  
1 North Brentwood Boulevard, Suite 1000  
St. Louis, MO 63105

- d. General Identifying Information About the Witness:

Ms. Brewer is a paralegal at Spencer Fane LLP

- e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Ms. Brewer is expected to testify as to photographs taken by Ms. Brewer at a cigar retailer in St. Louis, Missouri and her experience taking same; the documents identified below and other documents, if any, of this type.

- f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents Bates labelled as JB0000001-TR0000003; and other documents, if any, of the foregoing type.

5.

a. Name:

Tom Bailey

b. Telephone Number:

(215) 546-7400

c. Address:

c/o Confidential Investigative Services, Inc.  
235 South 13<sup>th</sup> Street  
Philadelphia, Pennsylvania 19107

d. General Identifying Information About the Witness:

Mr. Bailey is a private investigator at Confidential Investigative Services, Inc.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Bailey is expected to testify as to the information contained in or related to the document Bates labelled as TB0000001; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents Bates labelled as TB0000001-TB0000003; and other documents, if any, of the foregoing type.

6.

a. Name:

David Girolami

b. Telephone Number:

(856) 298-0783

c. Address:

271 W. Merchant Street  
Audubon, NJ 08106

d. General Identifying Information About the Witness:

Mr. Girolami was a private investigator at Confidential Investigative Services, Inc.

- e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Girolami is expected to testify as to the information contained in or related to the document Bates labelled as DG0000001; the documents identified below and other documents, if any, of this type.

- f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents Bates labelled as DG0000001-DG0000028; and other documents, if any, of the foregoing type.

7.

- a. Name:

Kevin A. Gregg

- b. Telephone Number:

(305) 444-0060

- c. Address:

Kurzban Kurzban, Tetzeli & Pratt, P.A.  
2650 Southwest 27<sup>th</sup> Ave., 2<sup>nd</sup> Floor  
Miami, FL 33133

- d. General Identifying Information About the Witness:

Mr. Gregg is an attorney at Kurzban Kurzban, Tetzeli & Pratt, P.A.

- e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Gregg is expected to testify as to the information contained in or related to documents Bates labelled as KG0000001-KG0000028 and other documents, if any, of this type.

- f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents Bates labelled as KG0000001-KG0000028; and other documents, if any, of the foregoing type.

8.

a. Name:

Shkumbin Mustafa

b. Telephone Number:

(646) 738-6003

c. Address:

Siegelvision Corp.  
9 East 40<sup>th</sup> Street, PH  
New York, NY 10016

d. General Identifying Information About the Witness:

Director of Digital Experiences at Siegelvision Corp.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Mustafa is expected to testify as to: actions taken by Mr. Mustafa on the internet and social media apps related to this proceeding, and videos and documents of same including, without limitation, those actions shown or described in the documents Bates labelled CT0037325; CT0037399-450; CT0035236; CT0035237-35322; CT0035323; CT0035324-355; CT0035356; CT0035357-389; CT0035390; CT0035391-403; CT0035404; CT0035405-416; CT0035417; CT0036948-974; CT0035445; CT0036975-37036; CT0037322; CT0037037-102; CT0037323; CT0037103-121; CT0037324; CT0037122-321; CT0037326; CT0037328-398; CT0037327; CT0037451-473; CT0035173; CT0036686-947; and other documents, if any, of the foregoing type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Videos and documents of actions taken by Mr. Mustafa on the internet and social media apps related to this proceeding including, without limitation, those actions shown or described in the documents Bates labelled CT0037325; CT0037399-450; CT0035236; CT0035237-35322; CT0035323; CT0035324-355; CT0035356; CT0035357-389; CT0035390; CT0035391-403; CT0035404; CT0035405-416; CT0035417; CT0036948-974; CT0035445; CT0036975-37036; CT0037322; CT0037037-102; CT0037323; CT0037103-121; CT0037324; CT0037122-321;

CT0037326; CT0037328-398; CT0037327; CT0037451-473; CT0035173; CT0036686-947; and other documents, if any, of the foregoing type.

9.

a. Name:

Brenna Murdock

b. Telephone Number:

(504) 507-0844

c. Address:

276 Chauncey St.  
Brooklyn, NY 11233

d. General Identifying Information About the Witness:

A former paralegal at Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Ms. Murdock is expected to testify as to documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; actions she took related to same; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; other documents downloaded from the internet; and other documents, if any, of the foregoing type. These include, without limitation, those identified by Bates numbers: CT0000001-CT0001103, CT0001276-CT003962, CT0031664-CT0031732, CT0012844-13045, CT0027394-CT0027448, CT0027631-CT0027647, CT0027665-CT0027668, CT0027670-CT0027674, CT0027678-CT0027691, CT0027693-CT0027707, CT0029351-CT0029376, CT0031245-CT0031318, CT0031895-CT0033018, CT0031332-CT0031520, CT0033025-CT0033394, CT0033411-CT0033426, CT0033428-CT0033807, CT0033814-CT0034088, CT0034257-CT0034864, CT0034885-CT0034913, CT0034924-CT0035049, CT0035063-CT0035070.

10.

a. Name:

Miguel Suarez Medina

b. Telephone Number:

(847) 239-4850

c. Address:

M1-100 Lawyers Club  
551 South State Street  
Ann Arbor, Michigan 48109

d. General Identifying Information About the Witness:

A former paralegal at Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Suarez is expected to testify as to: documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; actions he took related to same; state trademark registrations for the trademark COHIBA; the content of material that has been produced in discovery or otherwise provided or to be provided to Respondent, including, without limitation, the content of videos produced or identified in discovery; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; other documents downloaded from the internet; and other documents, if any, of the foregoing type. These include, without limitation, those identified by Bates numbers CT0036213-CT0036255, CT0036256-CT0036275; CT0036276-CT0036306; CT0036309-CT0036349; CT0037577-CT0037587 CT0036307-08; CT0036390-CT0036637; CT0035548-CT0035637; CT0035638-CT0035647; CT0036638-CT0036672; CT0044394-CT0044397; CT0036673-CT0036733; CT0036043-CT0036046; CT0036041-42; CT0036106-CT0036137; CT0037474-CT0037493; CT0036077-CT0036100; CT0036038-CT0036040, CT0036073-CT0036076; CT0036054-CT0036071; CT0036028-CT0036037; CT0036047-CT0036053; CT0036072; CT0043180-CT0043183; CT0043184-CT0043185; CT0036004-CT0036006; CT0036014-CT0036027; CT0037573-CT0037576;

CT0036138-CT0036141; CT0035508-CT0035647; CT0036200-CT0036206;  
CT0036162-CT0036182; CT0036183-CT0036188; CT0036189-CT0036199;  
CT0043186-CT0043189; CT0035977-CT0035981; CT0037715; CT0037716-  
CT0037719; CT0035982-CT0035999; CT0043190-CT0044279; CT0045718-  
CT0047201; CT0035648-CT0035806; CT0042397-CT0042485, CT0047837-  
CT0047839; CT0037494; CT0037799-CT0037802; CT0037803-CT0037905;  
CT0037906-CT0037907; CT0037908-CT0038010; CT0038011-CT0038039;  
CT0038040-CT0038068; CT0038069-CT0038074; CT0044387-CT0044390;  
CT0037553-CT0037555; CT0037588-CT0037714; CT0037721-CT0037750;  
CT0037556-CT0037567; CT0037568-CT0037572; CT0042696-CT0042702;  
CT0044391-CT0044393; CT0044411-CT0045717; CT0038075-CT0042383;  
CT0047202-CT0047836; CT0042904-CT0043179.

11.

a. Name:

Gerardo Ruiz

b. Telephone Number:

(347) 703.1775

c. Address:

625 E Stassney Ln  
Apt 3201  
Austin TX 78745

d. General Identifying Information About the Witness:

A former paralegal at Rabinowitz, Boudin, Standard, Krinsky & Lieberman, PC

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Ruiz is expected to testify as to: documents downloaded from the internet and other documents which were produced to Respondent during discovery; actions he took related to same; his purchase of cigars from online retailers identified in documents he downloaded from the internet; the content of material that has been produced in discovery or otherwise provided or to be provided to Respondent; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents downloaded from the internet and other documents which were

produced to Respondent during discovery; other documents downloaded from the internet; and other documents, if any, of the foregoing type. These include, without limitation, those identified by Bates numbers: CT0047840-CT0048027; CT0051777 - CT0054870; CT0055596-CT0055599.

12.

a. Name:

Annalisa Martini

b. Telephone Number:

(646) 306-6346

c. Address:

170 Amsterdam Avenue, Apt. 8L  
New York, NY 10023

d. General Identifying Information About the Witness:

Paralegal at Rabinowitz, Boudin, Standard, Krinsky & Lieberman, PC

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Ms. Martini is expected to testify as to: documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; actions she took related to same; the content of material that has been produced in discovery or otherwise provided or to be provided to Respondent, including, without limitation, the content of videos produced or identified in discovery; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; other documents downloaded from the internet; and other documents, if any, of the foregoing type. These include, without limitation, those identified by Bates numbers: CT0049402-CT0051741; CT0051515-CT0051741; CT0056042-CT0056045; CT0054871-CT0054895; CT0054896-CT0054907; CT0054914-CT0054930; CT0054941-CT0054943; CT0054951; CT0054955-CT0054960; CT0054965; CT0054975-CT0054979; CT0054990-CT0055008; CT0055011-CT0055014; CT0055019-CT0055020; CT0055036; CT0055068; CT0055081-CT0055082; CT0055099-CT0055114; CT0055134-CT0055135; CT0055144-



CT0055150; CT0055155; CT0055163-CT0055175; CT0055178-CT0055179;  
CT0055186-CT0055193; CT0055202-CT0055209; CT0055224-CT0055232;  
CT0055256-CT0055311; CT0055329-CT0055381; CT0055432-CT0055458;  
CT0055478-CT0055481; CT0055519-CT0055524; CT0055537-CT0055546;  
CT0055552-CT0055555; CT0055562-CT0055563; CT0055570-CT0055586;  
CT0055600-CT0055601; CT0055596-CT0055599; CT0055741-CT0055756;  
CT0055777-CT0055866; CT0055757-CT0055776; CT0055920-CT0056041;  
CT0055867-CT0055919.

13.

a. Name:

Christina Licata

b. Telephone Number:

(602) 326-3711

c. Address:

317 Vanderbilt St., Apt. 1  
Brooklyn, NY 11218

d. General Identifying Information About the Witness:

A paralegal at Rabinowitz, Boudin, Standard, Krinsky & Lieberman, PC

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Ms. Licata is expected to testify as to: documents downloaded from the internet and other documents which were produced to Respondent during discovery, produced or introduced in the federal action or otherwise provided to Respondent; actions she took related to same; the documents identified below and other documents, if any, of this type

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; other documents downloaded from the internet; and other documents, if any, of the foregoing type.

14.

a. Name:

Blair Smith

b. Telephone Number:

(312) 420-0147

c. Address:

Unknown to Petitioner; Respondent subpoenaed this witness

d. General Identifying Information About the Witness:

Mr. Smith was a Senior Brand Manager at General Cigar.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Smith is expected to testify regarding: any topic mentioned in the discovery deposition of Mr. Smith in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar including, without limitation, actual confusion; the corporate structure, operation and control of General Cigar; General Cigar's marketing, including, without limitation, its digital, social media, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; General Cigar's COHIBA Comador; and the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during Mr. Smith's discovery deposition in this proceeding; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; General Cigar Brand Plans, including, without limitation, drafts of same; documents prepared by or for General Cigar concerning cigars; correspondence to or from Mr. Smith and documents related to same; materials prepared by Moosylvania for General Cigar or concerning General Cigar's products; documents related to General Cigar's websites or social media accounts; and other documents, if any, of the foregoing type.

15.

a. Name:

Rene Labor

b. Telephone Number:

800-655-3385

c. Address:

Neptune Cigar Superstore  
3420 NW 7th St.  
Miami, FL 33125

d. General Identifying Information About the Witness:

Mr. Labor is currently a Copyrighter for Neptune Cigars.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Labor is expected to testify regarding: any topic mentioned in the discovery deposition of Mr. Labor in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar including, without limitation, actual confusion; interactions with consumers at Neptune Cigars; and the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document introduced during Mr. Labor's discovery deposition in this proceeding; any document related to: any topic mentioned in the discovery deposition of Mr. Labor in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; interactions with consumers at Neptune Cigars; and any document on the website of Neptune Cigars; and other documents, if any, of the foregoing type.

16.

a. Name:

Alan S. Willner

b. Telephone Number:

954-830-7090

c. Address:

10635 Cobalt Court  
Parkland, Florida 33076

d. General Identifying Information About the Witness:

Mr. Willner was General Cigar's Vice President of Marketing between 2011 and 2016 and its Interim President for part of that time.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Willner is expected to testify regarding: any topic mentioned in the discovery deposition of Mr. Willner in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar including, without limitation, actual confusion; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; the corporate structure, operation and control of General Cigar; General Cigar's marketing strategy, including, without limitation, its digital, social media, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; General Cigar's interactions with Moosylvania; General Cigar's websites or social media accounts; the COHIBA Comador cigar; and the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during Mr. Willner's discovery deposition in this proceeding; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; documents related to: any topic mentioned in the discovery deposition of Mr. Willner in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar including, without limitation, actual confusion; the corporate structure, operation and control of General Cigar; General Cigar's marketing strategy, including, without limitation, its digital, social media, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; General Cigar's interactions with Moosylvania; General Cigar's websites or social media accounts; the COHIBA

Comador cigar; and other documents, if any, of the foregoing type.

17.

a. Name:

*OnCuba* magazine or its publisher Fuego Enterprises, Inc.

b. Telephone Number:

(305) 602 0219

c. Address:

3250 NE 1st Ave, Unit 303  
Miami FL 33137

d. General Identifying Information About the Witness:

*OnCuba* magazine is a magazine published in the United States.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

The witness is expected to testify regarding: the advertising of the Cuban COHIBA in *OnCuba* magazine and the distribution and circulation of *OnCuba* magazine; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Issues of *OnCuba* magazine or selections of same; documents related to the distribution and circulation of *OnCuba* magazine; and other documents, if any, of the foregoing type.

18.

a. Name:

Michael Cullen

b. Address:

Michael Cullen Marketing Consultant, Inc. dba Fathom Research  
8 Pewter Ct.  
Nashua, New Hampshire 03063

c. Telephone Number:

(804) 302-1700

d. General Identifying Information About the Witness:

Mr. Cullen is currently retired. He was the President of Michael Cullen Marketing Consultant, Inc. dba Fathom Research.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

The witness is expected to testify regarding: any topic mentioned in the discovery deposition of Mr. Cullen in this proceeding; correspondence to and/or from Cullen or Michael Cullen Marketing Consultant, Inc. dba Fathom Research related to COHIBA; materials prepared by Cullen or Michael Cullen Marketing Consultant, Inc. dba Fathom Research for General Cigar or concerning General Cigar's products; and the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during discovery deposition of Mr. Cullen in this proceeding; the documents produced by Michael Cullen in this proceeding; documents related to any topic mentioned in the discovery deposition for Mr. Cullen; correspondence to and/or from Cullen or Michael Cullen Marketing Consultant, Inc. dba Fathom Research related to COHIBA; materials prepared by Cullen or Michael Cullen Marketing Consultant, Inc. dba Fathom Research for General Cigar or concerning General Cigar's products; and other documents, if any, of the foregoing type.

19.

a. Name:

Michael Harris

b. Telephone Number:

(314) 644-7900

c. Address:

Moosylvania, L.C.  
7303 Marietta Ave.  
St. Louis, MO 63143

d. General Identifying Information About the Witness:

Vice-President of Media at Moosylvania

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

The witness is expected to testify regarding: any topic mentioned in the discovery deposition of Mr. Michael Harris in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; the documents produced by Respondent or Moosylvania in this proceeding; correspondence to and/or from Moosylvania related to COHIBA; materials prepared by Moosylvania for General Cigar or concerning General Cigar's products; documents related to General Cigar's websites or social media accounts; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during discovery deposition of Mr. Harris in this proceeding; documents related to any topic mentioned in the discovery deposition for Mr. Harris; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; the documents produced by Respondent or Moosylvania in this proceeding; correspondence to and/or from Moosylvania related to COHIBA; materials prepared by Moosylvania for General Cigar or concerning General Cigar's products; documents related to General Cigar's websites or social media accounts; and other documents, if any, of the foregoing type.

a. Name:

Alvin Ossip

b. Telephone Number:

(914) 682-4782

c. Address:

11 Homewood Road  
Hartsdale, NY 10530

d. General Identifying Information About the Witness:

Mr. Ossip is an expert witness for Petitioner.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Any topic addressed or referenced in the discovery depositions of Mr. Ossip in this proceeding on June 29 and June 30, 2017; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during discovery depositions of Mr. Ossip in this proceeding on June 29 and June 30, 2017; documents related to any topics addressed or referenced in the discovery depositions of Mr. Ossip in this proceeding on June 29 and June 30, 2017; and other documents, if any, of the foregoing type.

21.

a. Name:

Alan Siegel

b. Telephone Number:

646-738-6000

c. Address:

9 E. 40th St., 16th Floor  
New York, NY 10016



d. General Identifying Information About the Witness:

Mr. Siegel is an expert witness for Petitioner.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Any topic addressed or referenced in the discovery deposition of Mr. Siegel in this proceeding on June 27, 2017; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during discovery deposition of Mr. Siegel in this proceeding on June 27, 2017; documents related to any topics addressed or referenced in the discovery deposition of Mr. Siegel in this proceeding on June 27, 2017; and other documents, if any, of the foregoing type.

22.

a. Name:

Steven Abbot

b. Telephone Number:

804-302-1700

c. Address:

General Cigar Co., Inc.  
7300 Beaufont Springs Drive, Suite 400  
Richmond, VA 23225

d. General Identifying Information About the Witness:

General Cigar's Senior Brand Manager

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Abbot is expected to testify regarding: any topic mentioned in the discovery deposition of Mr. Abbot in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA

cigar; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; the corporate structure, operation and control of General Cigar; General Cigar's marketing, including, without limitation, its digital, social media, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; General Cigar's COHIBA Comador; and the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during Mr. Abbot's discovery deposition in this proceeding; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; documents related to: any topic mentioned in the discovery deposition of Mr. Abbot in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; General Cigar Brand Plans, including, without limitation, drafts of same; documents prepared by or for General Cigar concerning cigars; correspondence to or from Mr. Abbot and documents related to same; materials prepared by Moosylvania for General Cigar or concerning General Cigar's products; documents related to General Cigar's websites or social media accounts; and other documents, if any, of the foregoing type.

23.

a. Name:

Augustin Martinez, III

b. Telephone Number:

804-302-1700

c. Address:

General Cigar Co., Inc.  
7300 Beaufont Springs Drive, Suite 400  
Richmond, VA 23225

d. General Identifying Information About the Witness:

General Cigar's Director of Brand Marketing

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Martinez is expected to testify regarding: any topic mentioned in the discovery deposition of Mr. Martinez in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; the corporate structure, operation and control of General Cigar; General Cigar's marketing, including, without limitation, its digital, social media, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; General Cigar's COHIBA Comador; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during Mr. Martinez's discovery deposition in this proceeding; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; documents related to: any topic mentioned in the discovery deposition of Mr. Martinez in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; General Cigar Brand Plans, including, without limitation, drafts of same; documents prepared by or for General Cigar concerning cigars; correspondence to or from Mr. Martinez and documents related to same; materials prepared by Moosylvania for General Cigar or concerning General Cigar's products; documents related to General Cigar's websites or social media accounts; and other documents, if any, of the foregoing type.

24.

a. Name:

Victoria McKee Jaworski

b. Telephone Number:

(804) 302-1700

c. Address:

General Cigar Co., Inc.  
7300 Beaufont Springs Drive, Suite 400  
Richmond, VA 23225

d. General Identifying Information About the Witness:

General Cigar's Director of Public Relations and Digital Media

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Ms. McKee is expected to testify regarding: any topic mentioned in the discovery deposition of Ms. McKee in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; the corporate structure, operation and control of General Cigar; General Cigar's marketing and communications strategy, including, without limitation, its digital, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during Ms. McKee's discovery deposition in this proceeding; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; documents related to: any topic mentioned in the discovery deposition of Ms. McKee in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; General Cigar Brand Plans, including, without limitation, drafts of same; documents prepared by or for General Cigar concerning cigars; correspondence to or from Ms. McKee and documents related to same; materials prepared by Moosylvania for General Cigar or concerning General Cigar's products; documents related to General Cigar's websites or social media accounts; and other documents, if any, of the foregoing type.

25.

a. Name:

Ed Lahmann

b. Telephone Number:

(804) 302-1700

c. Address:

General Cigar Co., Inc.  
7300 Beaufont Springs Drive, Suite 400  
Richmond, VA 232

d. General Identifying Information About the Witness:

Mr. Lahmann is currently Senior Brand Manager at General Cigar.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Lahmann is expected to testify regarding: any topic mentioned in the discovery deposition of Ms. Lahmann in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; the corporate structure, operation and control of General Cigar; General Cigar's marketing strategy, including, without limitation, its digital, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during Mr. Lahmann's discovery deposition in this proceeding; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; documents related to: any topic mentioned in the discovery deposition of Mr. Lahmann in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; General Cigar Brand Plans, including, without limitation, drafts of same; documents prepared by or for General Cigar concerning cigars; correspondence to or from Mr. Lahmann and documents related to same; materials prepared by Moosylvania for General Cigar or concerning General Cigar's products; documents related to General Cigar's websites or social media accounts; and other documents, if any, of the foregoing type.

26.

a. Name:

Andres Maturen

b. Telephone Number:

804-302-1700

c. Address:

General Cigar Co., Inc.  
7300 Beaufont Springs Drive, Suite 400  
Richmond, VA 23225

d. General Identifying Information About the Witness:

Mr. Maturen is currently a Brand Manager at General Cigar.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Maturen is expected to testify regarding: any topic mentioned in the discovery deposition of Mr. Maturen in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; the corporate structure, operation and control of General Cigar; General Cigar's marketing strategy, including, without limitation, its digital, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during Mr. Maturen's discovery deposition in this proceeding; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; documents related to: any topic mentioned in the discovery deposition of Mr. Maturen in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; General Cigar Brand Plans, including, without limitation, drafts of same; documents prepared by or for General Cigar concerning cigars; correspondence to or from Mr. Maturen and documents related to same; materials prepared by Moosylvania for General Cigar or concerning General Cigar's products; documents related to General Cigar's websites or social media accounts; and other documents, if any, of the foregoing type.

a. Name:

Rule 30(b)(6) witness for Respondent

b. Telephone Number:

(804) 302-1700

c. Address:

General Cigar Co., Inc.  
7300 Beaufont Springs Drive, Suite 400  
Richmond, VA 23225

d. General Identifying Information About the Witness:

Respondent

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

The Rule 30(b)(6) witness for Respondent is expected to testify regarding: any topic mentioned in the discovery deposition of the Rule 30(b)(6) witness for Respondent in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; the corporate structure, operation and control of General Cigar; General Cigar's marketing strategy, including, without limitation, its digital, social media, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; General Cigar's enforcement actions related to COHIBA, including, without limitation, actions and correspondence with any governmental agency or official concerning same; pricing, sales and distribution of General Cigar's products; General Cigar's websites and social media accounts; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document referenced during discovery deposition of the Rule 30(b)(6) witness for Respondent in this proceeding; the documents produced by Respondent, Moosylvania, Michael Cullen or any other third party in this proceeding; documents related to: any topic mentioned in the discovery deposition of the Rule 30(b)(6) witness for Respondent in this proceeding; any matter relevant to one or more of the likelihood of confusion factors set forth in *In*

*re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; the corporate structure, operation and control of General Cigar; General Cigar's marketing strategy, including, without limitation, its digital, social media, print, trade marketing, experiential and other forms of marketing; General Cigar's interactions with businesses selling cigars; General Cigar's enforcement actions related to COHIBA, including, without limitation, actions and correspondence with any governmental agency or official concerning same; pricing, sales and distribution of General Cigar's products; General Cigar's websites and social media accounts; and other documents, if any, of the foregoing type.

28. "Live" Trial Testimony and Deposition Testimony in the Federal Action, Empresa Cubana del Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc., U.S. District Court for the Southern District of New York, No. 97 Civ. 8399 (RWS)

Petitioner does not understand the trial testimony and deposition testimony of witnesses in the Federal Action to be within the scope of the Pre-Trial Disclosures required by Federal Rules of Civil Procedure 26(a)(3) and 37 C.F.R. Sec. 2.121(e). For the avoidance of doubt, Petitioner nonetheless advises that it may introduce the trial testimony and the deposition testimony in the Federal Action, or portions thereof, of any of the witnesses who testified at the trial or testified at deposition in the Federal Action. The subject of their testimony is as shown in their trial or deposition testimony. The documents and things that may be introduced in connection with their trial or deposition testimony are the exhibits and documents referenced in their trial or deposition testimony, and their examination at trial or deposition. General identifying information concerning these persons appears in their trial or deposition testimony, as does their address at the time. Petitioner assumes that Respondent does not require any of these persons' current telephone number or address, but, if Respondent so requests, Petitioner will provide such information as it has for such persons.

Dated: New York, New York  
September 20, 2018

Respectfully submitted,

By:/Lindsey Frank/

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Michael Krinsky  
Lindsey Frank  
RABINOWITZ, BOUDIN, STANDARD,  
KRINSKY & LIEBERMAN, P.C.  
14 Wall Street, 30th Floor  
New York, NY 10005  
(212) 254-1111  
[lfrank@rbskl.com](mailto:lfrank@rbskl.com)

*Attorneys for Petitioner Empresa Cubana del  
Tabaco*



**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing PETITIONER'S PRETRIAL DISCLOSURES was served by email on Respondent on September 20, 2018 to:

Andrew L. Deutsch  
Rodrigues, Airina  
DLA Piper US LLP  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 335-4673  
[andrew.deutsch@dlapiper.com](mailto:andrew.deutsch@dlapiper.com)  
[Airina.Rodrigues@dlapiper.com](mailto:Airina.Rodrigues@dlapiper.com)

\_\_\_\_\_/Lindsey Frank/\_\_\_\_\_

# **Exhibit 09**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| -----                              | X |                           |
| EMPRESA CUBANA DEL TABACO, d.b.a.  | : |                           |
| CUBATABACO,                        | : |                           |
|                                    | : |                           |
| Petitioner,                        | : | Cancellation No. 92025859 |
|                                    | : |                           |
| v.                                 | : |                           |
|                                    | : |                           |
| GENERAL CIGAR CO., INC. and CULBRO | : |                           |
| CORP.                              | : |                           |
|                                    | : |                           |
| Respondents.                       | : |                           |
| -----                              | X |                           |

**PETITIONER’S SUPPLEMENTAL PRETRIAL DISCLOSURES**

Pursuant to Federal Rules of Civil Procedure 26(a)(3) and 37 C.F.R. § 2.121(e), Petitioner *Empresa Cubana del Tabaco dba Cubatabaco* (“Petitioner”) hereby supplements the Pretrial Disclosures it served on Respondent on September 20, 2018 by providing the following pretrial disclosure to Respondent of: (a) the name and the telephone number and address of an additional witness from whom it intends to take testimony, or may take testimony if the need arises, during its testimony period; (b) general identifying information about an additional witness, such as relationship to any party, including job title if employed by a party, or, if neither a party nor related to a party, occupation and job title (“General Identifying Information About the Witness”); (c) a general summary or list of subjects on which this additional witness is expected to testify, and (d) a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of this additional witness.

Petitioner's disclosures represent a good faith effort to identify information reasonably believed to be required by the applicable rules. Petitioner reserves the right to supplement these disclosures.

**WITNESSES FROM WHOM PETITIONER MAY TAKE TESTIMONY**

Petitioner intends to take testimony, or may take testimony if the need arises, from the following witnesses:

1.

a. Name:

Susan Bailey

b. Telephone Number:

(212) 254-1111

c. Address:

14 Wall Street, 31<sup>st</sup> Floor  
New York, New York

d. General Identifying Information About the Witness:

Non-attorney staff at Rabinowitz, Boudin, Standard, Krinsky & Lieberman, PC

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Ms. Bailey is expected to testify as to: documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; actions she took related to same; the content of material that has been produced in discovery or otherwise provided or to be provided to Respondent; the documents identified below and other documents, if any, of this type.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal

action; other documents downloaded from the internet; and other documents, if any, of the foregoing type. These include, without limitation, those identified by Bates numbers: CT0042703-CT0042893.

Dated: New York, New York  
September 28, 2018

Respectfully submitted,

By: Lindsey Frank/

Michael Krinsky

Lindsey Frank

RABINOWITZ, BOUDIN, STANDARD,  
KRINSKY & LIEBERMAN, P.C.

14 Wall Street, 30th Floor

New York, NY 10005

(212) 254-1111

[lfrank@rbskl.com](mailto:lfrank@rbskl.com)

*Attorneys for Petitioner Empresa Cubana del  
Tabaco*

## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing PETITIONER'S SUPPLEMENTAL PRETRIAL DISCLOSURES was served by email on Respondent on September 28, 2018 to:

Andrew L. Deutsch  
Rodrigues, Airina  
DLA Piper US LLP  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 335-4673  
[andrew.deutsch@dlapiper.com](mailto:andrew.deutsch@dlapiper.com)  
[Airina.Rodrigues@dlapiper.com](mailto:Airina.Rodrigues@dlapiper.com)

/Lindsey Frank/

# **Exhibit 10**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| -----                              | X |                           |
| EMPRESA CUBANA DEL TABACO, d.b.a.  | : |                           |
| CUBATABACO,                        | : |                           |
|                                    | : |                           |
| Petitioner,                        | : | Cancellation No. 92025859 |
|                                    | : |                           |
| v.                                 | : |                           |
|                                    | : |                           |
| GENERAL CIGAR CO., INC. and CULBRO | : |                           |
| CORP.                              | : |                           |
|                                    | : |                           |
| Respondents.                       | : |                           |
| -----                              | X |                           |

**PETITIONER’S REBUTTAL DISCLOSURES**

Pursuant to Federal Rules of Civil Procedure 26(a)(3) and 37 C.F.R. § 2.121(e), Petitioner *Empresa Cubana del Tabaco dba Cubatabaco* (“Petitioner”) hereby makes the following Rebuttal Disclosures to Respondent of: (a) the name and the telephone number and address of each witness from whom it intends to take testimony, or may take testimony if the need arises, during its rebuttal testimony period; (b) general identifying information about the witness, such as relationship to any party, including job title if employed by a party, or, if neither a party nor related to a party, occupation and job title (“General Identifying Information About the Witness”); (c) a general summary or list of subjects on which the witness is expected to testify, and (d) a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness.

Petitioner’s disclosures represent a good faith effort to identify information reasonably



believed to be required by the applicable rules. Petitioner reserves the right to supplement these disclosures.

**WITNESSES FROM WHOM PETITIONER MAY TAKE TESTIMONY**

Petitioner intends to take testimony, or may take testimony if the need arises, from the following witnesses:

1.

a. Name:

Susan Bailey

b. Telephone Number:

(212) 254-1111

c. Address:

14 Wall Street, 31<sup>st</sup> Floor  
New York, New York

d. General Identifying Information About the Witness:

Non-attorney staff at Rabinowitz, Boudin, Standard, Krinsky & Lieberman, PC

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Ms. Bailey is expected to testify as matters to rebut evidence offered by the respondents. This includes, without limitation, any matter relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar such as, without limitation, testimony concerning documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; actions she took related to same; the content of material that has been produced in discovery or otherwise provided or to be provided to Respondent; the documents identified below and other documents, if any, of this type; the offer for sale and purchase of General Cigar Cohiba cigars in the United States.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Any document related to any matter to rebut evidence offered by the respondents including, without limitation, matters relevant to one or more of the likelihood of confusion factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (C.C.P.A. 1973) regarding likelihood of confusion between General Cigar's COHIBA cigar and the Cuban COHIBA cigar; documents downloaded from the internet and other documents which were produced to Respondent during discovery or produced or introduced in the federal action; other documents downloaded from the internet; printed publications; other publicly available documents; and other documents, if any, of the foregoing type.

2.

a. Name:

Thomas J. Reilly

b. Telephone Number:

(212) 737-3315

c. Address:

The Reilly International Group, Ltd.  
157 East 75<sup>th</sup> St., Suite 1E  
New York, NY 10021

d. General Identifying Information About the Witness:

Mr. Reilly is a private investigator and the President of The Reilly International Group, Ltd.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Reilly is expected to testify as matters to rebut evidence offered by the Respondent, namely testimony concerning the purchase of General Cigar Cohiba cigars in the United States and the sale in the United States of General Cigar Cohiba cigars.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents related to matters to rebut evidence offered by the Respondent, namely the purchase of General Cigar Cohiba cigars in the United States and the sale in the United States of General Cigar Cohiba cigars.

3.

a. Name:

Dean Gluth

b. Telephone Number:

(847) 301-1475

c. Address:

InfoMAX Investigations and Bugsweeps  
P.O. Box 681175  
Schaumburg, Illinois 60168-1175

d. General Identifying Information About the Witness:

Mr. Gluth is a private investigator.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Gluth is expected to testify as matters to rebut evidence offered by the Respondent, namely testimony concerning the purchase of General Cigar Cohiba cigars in the United States and the sale in the United States of General Cigar Cohiba cigars.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents related to matters to rebut evidence offered by the Respondent, namely the purchase of General Cigar Cohiba cigars in the United States and the sale in the United States of General Cigar Cohiba cigars.

4.

a. Name:

Wilfredo Hernandez Ramírez

b. Telephone Number:

(53) (7) 204-0530

c. Address:

c/o Corporación Habanos, S.A.  
Centro de Negocios Miramar, Edificio Habana, Piso 3,

Ave. 3ra esquina a 78,  
Miramar, Playa,  
La Habana, Cuba CP 11300

d. General Identifying Information About the Witness:

Mr. Hernandez is a designer at Corporación Habanos, S.A.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

Mr. Hernandez is expected to testify as to matters to rebut evidence offered by the Respondent, namely the design of cigar marks, including, without limitation, the Cuban COHIBA cigar and the General Cigar COHIBA cigar marks.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents to rebut evidence offered by the Respondent, namely documents related to the design of cigar marks, including, without limitation, the Cuban COHIBA cigar and the General Cigar COHIBA cigar marks.

5. Pursuant to the marking and filing procedure the Board has previously approved, TTABVUE Nos. 165, 157, 138, 137, 135 and 132, Petitioner will also designate portions of the deposition transcripts of the following individuals; as well as the discovery deposition exhibits identified in the designated portions, to rebut evidence offered by the Respondents. Petitioner has previously provided the address and telephone number and other General Identifying Information About these Witnesses. Petitioner assumes that Respondent does not require the address and telephone number and other General Identifying Information About these Witnesses but, if Respondent so requests, Petitioner will provide such information as it has for such persons.

1. Andres Maturen Maal
2. Augustin Martinez, III
3. Blair Smith
4. Edward Lahmann
5. Eugene Paul Richter, III
6. Michael Cullen
7. Michael Harris
8. Rene Labor
9. Steven Abbot
10. Victoria McKee Jaworski
11. Richard Carleton Hacker, June 15, 2017
12. Alvin Ossip, June 29, 2017
13. Alvin Ossip, June 30, 2017
14. Eugene Paul Richter, III, designated by Respondent pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure

6. “Live” Trial Testimony and Deposition Testimony in the Federal Action, Empresa Cubana del Tabaco d.b.a. Cubatabaco v. Culbro Corp. and General Cigar Co., Inc., U.S. District Court for the Southern District of New York, No. 97 Civ. 8399 (RWS)

Petitioner does not understand the trial testimony and deposition testimony of witnesses in the Federal Action to be within the scope of the Pre-Trial Disclosures required by Federal Rules of Civil Procedure 26(a)(3) and 37 C.F.R. Sec. 2.121(e). For the avoidance of doubt, Petitioner nonetheless advises that it may introduce the trial testimony and the deposition testimony in the Federal Action, or portions thereof, of any of the witnesses who testified at the trial or testified at deposition in the Federal Action. The subject of their testimony is as shown in their trial or deposition testimony. The documents and things that may be introduced in connection with their trial or deposition testimony are the exhibits and documents referenced in their trial or deposition testimony, and their examination at trial or deposition. General identifying information concerning these persons appears in their trial or deposition testimony, as does their address at the time. Petitioner assumes that Respondent does not require any of these persons' current telephone number or address, but, if Respondent so requests, Petitioner will provide such information as it has for such persons.

Dated: New York, New York  
January 15, 2021

Respectfully submitted,

By: /s/ Lindsey Frank

Michael Krinsky  
Lindsey Frank  
RABINOWITZ, BOUDIN, STANDARD,  
KRINSKY & LIEBERMAN, P.C.  
14 Wall Street, 30th Floor  
New York, NY 10005  
(212) 254-1111  
[lfrank@rbskl.com](mailto:lfrank@rbskl.com)

*Attorneys for Petitioner Empresa Cubana del  
Tabaco*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing PETITIONER'S  
REBUTTAL DISCLOSURES was served by email on Respondent on January 15, 2021 to:

Andrew L. Deutsch  
John Nading  
Joshua Schwartzman  
DLA Piper US LLP  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 335-4673  
[andrew.deutsch@dlapiper.com](mailto:andrew.deutsch@dlapiper.com)  
[john.nading@dlapiper.com](mailto:john.nading@dlapiper.com)  
[joshua.schwartzman@dlapiper.com](mailto:joshua.schwartzman@dlapiper.com)

/s/Lindsey Frank  
\_\_\_\_\_

# **Exhibit 11**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273

For the mark COHIBA

Date registered: June 6, 1995

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| -----                              | X |                           |
| EMPRESA CUBANA DEL TABACO, d.b.a.  | : |                           |
| CUBATABACO,                        | : |                           |
|                                    | : |                           |
| Petitioner,                        | : | Cancellation No. 92025859 |
|                                    | : |                           |
| v.                                 | : |                           |
|                                    | : |                           |
| GENERAL CIGAR CO., INC. and CULBRO | : |                           |
| CORP.                              | : |                           |
|                                    | : |                           |
| Respondents.                       | : |                           |
| -----                              | X |                           |

**PETITIONER'S SUPPLEMENTAL REBUTTAL DISCLOSURES**

Pursuant to Federal Rules of Civil Procedure 26(a)(3) and 37 C.F.R. § 2.121(e), Petitioner *Empresa Cubana del Tabaco dba Cubatabaco* ("Petitioner") hereby makes the following Supplemental Rebuttal Disclosures to Respondent of: (a) the name and the telephone number and address of each witness from whom it intends to take testimony, or may take testimony if the need arises, during its rebuttal testimony period; (b) general identifying information about the witness, such as relationship to any party, including job title if employed by a party, or, if neither a party nor related to a party, occupation and job title ("General Identifying Information About the Witness"); (c) a general summary or list of subjects on which the witness is expected to testify, and (d) a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness.

Petitioner's disclosures represent a good faith effort to identify information reasonably



believed to be required by the applicable rules. Petitioner reserves the right to supplement these disclosures.

**WITNESSES FROM WHOM PETITIONER MAY TAKE TESTIMONY**

Petitioner intends to take testimony, or may take testimony if the need arises, from the following witnesses:

1.

a. Name:

David Burghauser  
Charlie Linehan  
Luke Brindle-Khym

b. Telephone Number:

(646) 356-1057

c. Address:

QRI  
41 East 11th Street, 10th Floor  
New York, NY 10003

d. General Identifying Information About the Witness:

The potential witnesses are private investigators.

e. General Summary or List of Subjects on Which the Witness Is Expected To Testify:

The potential witnesses are expected to testify as matters to rebut evidence offered by the Respondent, namely testimony concerning the purchase of General Cigar Cohiba cigars in the United States and the sale in the United States of General Cigar Cohiba cigars.

f. General Summary or List of the Types of Documents and Things Which May Be Introduced as Exhibits During the Testimony of the Witness:

Documents related to matters to rebut evidence offered by the Respondent, namely the purchase of General Cigar Cohiba cigars in the United States and the sale in the United States of General Cigar Cohiba cigars.

Dated: New York, New York  
January 16, 2021

Respectfully submitted,

By: /s/ Lindsey Frank

Michael Krinsky

Lindsey Frank

RABINOWITZ, BOUDIN, STANDARD,  
KRINSKY & LIEBERMAN, P.C.

14 Wall Street, 30th Floor

New York, NY 10005

(212) 254-1111

[lfrank@rbskl.com](mailto:lfrank@rbskl.com)

*Attorneys for Petitioner Empresa Cubana del  
Tabaco*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing PETITIONER'S SUPPLEMENTAL REBUTTAL DISCLOSURES was served by email on Respondent on January 16, 2021 to:

Andrew L. Deutsch  
John Nading  
Joshua Schwartzman  
DLA Piper US LLP  
1251 Avenue of the Americas  
New York, NY 10020  
Telephone: (212) 335-4673  
[andrew.deutsch@dlapiper.com](mailto:andrew.deutsch@dlapiper.com)  
[john.nading@dlapiper.com](mailto:john.nading@dlapiper.com)  
[joshua.schwartzman@dlapiper.com](mailto:joshua.schwartzman@dlapiper.com)

\_\_\_\_\_  
/s/Lindsey Frank

# **Exhibit 12**



**DLA Piper LLP (US)**  
2000 Avenue of the Stars  
Suite 400 North Tower  
Los Angeles, California 90067-4704  
[www.dlapiper.com](http://www.dlapiper.com)

Andrew L. Deutsch  
[andrew.deutsch@dlapiper.com](mailto:andrew.deutsch@dlapiper.com)  
T 212.335.4880  
F 212.884.8580

March 2, 2021

*VIA EMAIL*

Lindsey Frank  
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.  
14 Wall Street, Fl. 30  
New York, NY 10005

**Re: Empresa Cubana del Tabaco d.b.a. Cubatabaco v. General Cigar Co., Inc.  
Cancellation Proceeding No. 92025859.**

Dear Lindsey:

Attached hereto as Exhibits 1-3 are service copies of Respondent's Notices to Cross-Examine: (1) Mr. Dean J. Gluth; (2) Mr. Charles Linehan; and (3) Ms. Susan Bailey, which we filed with the Board today. We request that you check on the availability of these witnesses for March 17-19, 2021 and March 22-24, 2021. Please note that because I intend to take these cross-examinations from the west coast, I request that cross-examinations not commence until 12:00 PM ET. On March 23, 2021, we are only available starting at 2:00 PM ET. I expect that the investigator cross-examinations will not exceed two hours, but Ms. Bailey's may take up to five hours.

For your reference and planning, we will use Veritext as the video conferencing platform provider.

This letter also serves to provide Petitioner notice under 37 C.F.R. § 2.123(e)(3), that General Cigar is cross-examining each of the three rebuttal witnesses under protest, reserving its right to object to the receipt of the testimony in evidence for lack of improper or inadequate disclosure, and to timely move to strike their rebuttal trial testimonies as not disclosed as required by 37 C.F.R. § 2.121(e) and TBMP § 702.01.

Respondent reserves all rights and remedies and waives none.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Andrew Deutsch', written over a light blue horizontal line.

Andrew L. Deutsch

# **Exhibit 01**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309  
For the mark COHIBA  
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273  
For the mark COHIBA  
Date registered: June 6, 1995

|                                   |   |                           |
|-----------------------------------|---|---------------------------|
| -----                             | X |                           |
| EMPRESA CUBANA DEL TABACO, d.b.a. | : |                           |
| CUBATABACO,                       | : |                           |
|                                   | : |                           |
| Petitioner,                       | : |                           |
|                                   | : | Cancellation No. 92025859 |
| v.                                | : |                           |
| GENERAL CIGAR CO., INC.           | : |                           |
|                                   | : |                           |
| Respondent.                       | : |                           |
|                                   | : |                           |
|                                   | : |                           |
| -----                             | X |                           |

**NOTICE OF ELECTION TO ORALLY CROSS-EXAMINE MR. DEAN J. GLUTH**

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE THAT pursuant to TBMP 703.01(e) and 37 C.F.R. § 2.123(a)(1), Respondent, General Cigar Company, Inc. (“General Cigar”), by and through its undersigned counsel, hereby provides notice of election to orally cross-examine Mr. Dean J. Gluth via video conferencing commencing at 12:00 PM ET on a date and time to be determined by mutual agreement between the parties on or before April 2, 2021 as provided by the Board’s current schedule. The cross-examination will be taken before an officer authorized by law to administer oaths and recorded using audiotape and/or stenographic means.

Dated: March 2, 2021  
Los Angeles, California

Respectfully submitted,

By: /s/ Andrew L. Deutsch

Andrew L. Deutsch  
DLA PIPER LLP (US)  
2000 Avenue of the Stars  
Suite 400, North Tower  
Los Angeles, California 90067-4704  
Telephone: (310) 595-3000  
Facsimile: (310) 595-3300

John Nading  
DLA PIPER LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004  
Telephone: (310) 595-3000

Joshua Schwartzman  
DLA PIPER LLP (US)  
1251 Avenue of the Americas New  
York, New York 10020-1104  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
*Attorneys for General Cigar Co., Inc*



**CERTIFICATE OF SERVICE**

I hereby certify that on this date I have caused to be served a true and correct copy of the foregoing: NOTICE OF ELECTION TO ORALLY CROSS-EXAMINE MR. DEAN J. GLUTH by transmitting copies by electronic mail dated March 2, 2021, to Petitioner's counsel:

Michael Krinsky  
Lindsey Frank  
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.  
14 Wall Street, 30th Floor  
New York, NY 10005  
(212) 254 - 1111  
[mkrinsky@rbskl.com](mailto:mkrinsky@rbskl.com)  
[lfrank@rbskl.com](mailto:lfrank@rbskl.com)  
*Attorneys for Petitioner, Empresa Cubana del Tabaco, d.b.a. Cubatabaco*

Date: March 2, 2021

/s/ Joshua Schwartzman

# **Exhibit 02**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 1147309  
For the mark COHIBA  
Date registered: February 17, 1981

AND

In the matter of the Trademark Registration No. 1898273  
For the mark COHIBA  
Date registered: June 6, 1995

|                                   |   |                           |
|-----------------------------------|---|---------------------------|
| -----                             | X |                           |
| EMPRESA CUBANA DEL TABACO, d.b.a. | : |                           |
| CUBATABACO,                       | : |                           |
|                                   | : |                           |
| Petitioner,                       | : |                           |
|                                   | : | Cancellation No. 92025859 |
| v.                                | : |                           |
| GENERAL CIGAR CO., INC.           | : |                           |
|                                   | : |                           |
| Respondent.                       | : |                           |
|                                   | : |                           |
|                                   | : |                           |
| -----                             | X |                           |

**NOTICE OF ELECTION TO ORALLY CROSS-EXAMINE MR. CHARLES LINEHAN**

TO ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE THAT pursuant to TBMP 703.01(e) and 37 C.F.R. § 2.123(a)(1), Respondent, General Cigar Company, Inc. (“General Cigar”), by and through its undersigned counsel, hereby provides notice of election to orally cross-examine Mr. Charles Linehan via video conferencing on a date to be determined by mutual agreement between the parties on or before April 2, 2021 as provided by the Board’s current schedule. The cross-examination will be taken before an officer authorized by law to administer oaths and recorded using audiotape and/or stenographic means.

Dated: March 2, 2021  
Los Angeles, California

Respectfully submitted,

By: /s/ Andrew L. Deutsch

Andrew L. Deutsch  
DLA PIPER LLP (US)  
2000 Avenue of the Stars  
Suite 400, North Tower  
Los Angeles, California 90067-4704  
Telephone: (310) 595-3000  
Facsimile: (310) 595-3300

John Nading  
DLA PIPER LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004  
Telephone: (310) 595-3000

Joshua Schwartzman  
DLA PIPER LLP (US)  
1251 Avenue of the Americas New  
York, New York 10020-1104  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501

*Attorneys for General Cigar Co., Inc*

**CERTIFICATE OF SERVICE**

I hereby certify that on this date I have caused to be served a true and correct copy of the foregoing: NOTICE OF ELECTION TO ORALLY CROSS-EXAMINE MR. CHARLES LINEHAN by transmitting copies by electronic mail dated March 2, 2021, to Petitioner's counsel:

Michael Krinsky  
Lindsey Frank  
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.  
14 Wall Street, 30th Floor  
New York, NY 10005  
(212) 254 - 1111  
[mkrinsky@rbskl.com](mailto:mkrinsky@rbskl.com)  
[lfrank@rbskl.com](mailto:lfrank@rbskl.com)  
*Attorneys for Petitioner, Empresa Cubana del Tabaco, d.b.a. Cubatabaco*

Date: March 2, 2021

/s/ Joshua Schwartzman

# **Exhibit 03**

Dated: March 2, 2021  
Los Angeles, California

Respectfully submitted,

By: /s/ Andrew L. Deutsch

Andrew L. Deutsch  
DLA PIPER LLP (US)  
2000 Avenue of the Stars  
Suite 400, North Tower  
Los Angeles, California 90067-4704  
Telephone: (310) 595-3000  
Facsimile: (310) 595-3300

John Nading  
DLA PIPER LLP (US)  
500 Eighth Street, NW  
Washington, DC 20004  
Telephone: (310) 595-3000

Joshua Schwartzman  
DLA PIPER LLP (US)  
1251 Avenue of the Americas New  
York, New York 10020-1104  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501

*Attorneys for General Cigar Co., Inc.*



**CERTIFICATE OF SERVICE**

I hereby certify that on this date I have caused to be served a true and correct copy of the foregoing: NOTICE OF ELECTION TO ORALLY CROSS-EXAMINE MS. SUSAN BAILEY by transmitting copies by electronic mail dated March 2, 2021, to Petitioner's counsel:

Michael Krinsky  
Lindsey Frank  
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C.  
14 Wall Street, 30th Floor  
New York, NY 10005  
(212) 254 - 1111  
[mkrinsky@rbskl.com](mailto:mkrinsky@rbskl.com)  
[lfrank@rbskl.com](mailto:lfrank@rbskl.com)  
*Attorneys for Petitioner, Empresa Cubana del Tabaco, d.b.a. Cubatabaco*

Date: March 2, 2021

/s/ Joshua Schwartzman

# **Exhibit 13**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Registration  
No. 1147309 for the mark COHIBA  
Date registered: February 17, 1981

AND

In the Matter of Trademark Registration  
No. 1898273 for the mark COHIBA  
Date Registered: June 6, 1995

-----x  
EMPRESA CUBANA DEL TABACO, d.b.a  
CUBATABACO,

Petitioner,

v.

Cancellation No.  
92025859

GENERAL CIGAR CO., INC. and CULBRO  
CORP.,

Respondents.  
-----x

March 29 , 2021  
3:06 p.m.

CROSS-EXAMINATION DEPOSITION  
TAKEN UNDER PROTEST BY RESPONDENT of DEAN  
J. GLUTH, held via Zoom Video Conferencing,  
pursuant to Trademark Trial and Appeal  
Board Manual of Procedure 707(b) (3)  
and 37 CFR § 2.123(e) (3), before  
Abner D. Berzon, a Registered Professional  
Reporter, Certified Realtime Reporter and  
Notary Public of the State of New York,  
via Zoom Video Conferencing.

A P P E A R A N C E S :

(Via Zoom Video Conferencing)

RABINOWITZ BOUDIN STANDARD

KRINSKY & LIEBERMAN, P.C.

14 Wall Street, Suite 3002

New York, New York 10005

Attorneys for Petitioner

BY: LINDSEY FRANK, ESQ.

lfrank@rbskl.com

(212) 254-1111

(Via Zoom Video Conferencing)

DLA PIPER LLP (US)

2000 Avenue of the Stars, Suite 400

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Attorneys for Respondents

GENERAL CIGAR COMPANY, INC.

BY: ANDREW L. DEUTSCH, ESQ.

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\* \* \*

1                   GLUTH - Cross

2           Q.       And do you maintain an office in  
3 a location separate from your residence?

4           A.       No.

5           Q.       So you worked from home; is that  
6 correct?

7           A.       Correct.

8           Q.       Do you do business as a private  
9 detective?

10          A.       Yes.

11          Q.       And do you do that in a  
12 corporate or limited liability forum?

13          A.       InfoMAX Investigations is  
14 incorporated.

15          Q.       Is it a corporation, or is it a  
16 limited liability company?

17          A.       Incorporated. Corporation.

18          Q.       In what state is it  
19 incorporated?

20          A.       Illinois.

21          Q.       Are you the sole owner of it?

22          A.       Yes.

23          Q.       Do you own or operate any other  
24 investigation or detection agency?

25          A.       I operate another detective --

1                   GLUTH - Cross

2       to finish the question. Have you entered  
3       into any written engagement with the  
4       Rabinowitz Boudin firm?

5           A.       No.

6           Q.       Was the work that you did that  
7       resulted in your declaration initiated by  
8       a contact from Mr. Frank?

9           A.       Yes.

10          Q.       And when was that contact made?

11          A.       I'm not exactly sure. Middle of  
12       January sometime, I think.

13          Q.       Well, the date of your  
14       declaration is February 3, 2021. Can you  
15       say approximately how much time prior to  
16       that you were first contacted by  
17       Mr. Frank?

18          A.       Mid January.

19          Q.       Had you ever had any dealings  
20       with Mr. Frank prior to that time?

21          A.       No.

22          Q.       Had you ever had any dealings  
23       with the Rabinowitz Boudin firm prior to  
24       that time?

25          A.       No.

1                   GLUTH - Cross

2           what, Mr. Frank?

3                   MR. FRANK:   The witness has  
4           identified that we do not have a  
5           written agreement and his work began  
6           in the course of our first  
7           conversation, and so our conversation  
8           is protected by attorney work product.

9           Q.       Did Mr. Frank give you an  
10          assignment in that first conversation or  
11          exchange of e-mails, whatever it was, that  
12          you had with him?

13          A.       I'm not sure if it was the first  
14          correspondence.   It was all via e-mail.  
15          And I don't know if there was a back and a  
16          forth -- but there was an introduction and  
17          a conversation -- or whether he just  
18          described instructions in the beginning.  
19          I don't know.

20          Q.       What did he instruct you to do?

21          A.       I was just advised of a store  
22          address and to go there, and if there was  
23          Cohiba cigars there, to make a purchase.

24          Q.       Is the store address that you  
25          were advised of the Plaza Mini-Mart

1                   GLUTH - Cross

2       located at 5022 West Lawrence Avenue, in  
3       Chicago, Illinois?

4           A.       Yes.

5           Q.       Had you ever patronized that  
6       store before you dealt with Mr. Frank?

7           A.       No.

8           Q.       Did you know of the existence of  
9       that store prior to the time that you were  
10      engaged by Mr. Frank?

11          A.       No.

12          Q.       Did you know the area where the  
13      store was located?

14          A.       I've traveled on that street  
15      before in my lifetime.

16          Q.       Can you describe --

17                   MR. FRANK: Let me get an  
18      objection in there, an objection to  
19      the prior question.

20                   MR. DEUTSCH: Okay.

21          Q.       Would you describe the  
22      neighborhood where 5022 West Lawrence  
23      Avenue is located?

24          A.       It's a typical Chicago urban  
25      street with various small businesses and



1                   GLUTH - Cross

2       one other version that was sent to me and  
3       in paragraph 4 it didn't include the  
4       sentence that said "prior to physically  
5       going to the mini-mart I visited the  
6       website." So I mentioned that, and then  
7       he, Mr. Frank, added it and sent me a  
8       revised version.

9           Q.       Was there in fact a paragraph 4  
10       with pictures of cigars in the first  
11       version of the declaration which was  
12       tendered to you?

13          A.       Yeah. The only thing that I  
14       just mentioned was that I thought it  
15       should include something stating that I --  
16       that I'd seen the website prior to  
17       arrival.

18          Q.       Mr. Gluth, the sum of your  
19       testimony is that you're aware that one  
20       convenience store on Lawrence Avenue in  
21       Chicago had a box of Cohiba Blue cigars  
22       and sold you two cigars from that box on a  
23       given day; is that correct?

24          A.       Correct.

25                   MR. FRANK: Objection.

C E R T I F I C A T I O N

I, ABNER D. BERZON, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public, do hereby certify that the foregoing witness, DEAN J. GLUTH, was duly sworn on the date indicated, and that the foregoing is a true and accurate transcription of my stenographic notes.

I further certify that I am not employed by nor related to any party to this action.



-----  
ABNER D. BERZON, RPR, CRR  
Notary Public, State of New York  
No. 01BE6303311  
Qualified in New York County  
Commission Expires 5/12/22

# **Exhibit 14**

IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE  
BEFORE THE  
TRADEMARK TRIAL AND APPEALS BOARD

In the matter of Trademark Registration  
No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

-and-

In the matter of Trademark Registration  
No. 1898273

For the mark COHIBA

Date Registered: June 6, 1995

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EMPRESA CUBANA DEL )  
TABACO, d.b.a. )  
CUBATABACO, )  
Petitioner, )

vs.

GENERAL CIGAR CO., INC. )  
and CULBRO CORP., )  
Respondents. )

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) Cancellation  
) No. 92025829

REMOTE CROSS-EXAMINATION DEPOSITION OF  
CHARLES LINEHAN  
TAKEN UNDER PROTEST BY RESPONDENT  
New York, New York  
Wednesday, March 31, 2021

Reported By:

CATHI IRISH, RPR, CRR, CLVS

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March 31, 2021

3:10 p.m.

Remote deposition of CHARLES  
LINEHAN, with all participants  
appearing via videoconference, before  
Cathi Irish, a Registered Professional  
Reporter, Certified Realtime Reporter,  
and Notary Public of the State of  
New York.

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A P P E A R A N C E S:

RABINOWITZ BOUDIN STANDARD KRINSKY  
& LIEBERMAN

Attorneys for Petitioner

45 Broadway  
Suite 1700  
New York, New York 10006

BY: LINDSEY FRANK, ESQ.

DLA PIPER LLP (US)

Attorneys for Respondents

2000 Avenue of the Stars  
Suite 400 North Tower  
Los Angeles, California 90067

BY: ANDREW L. DEUTSCH, ESQ.

ALSO PRESENT:

Michael Correia, Veritext concierge

1 LINEHAN

2 A. K2 Intelligence is an  
3 intelligence and investigative firm. It  
4 also does anti-money laundering work. It  
5 does construction monitoring but at its  
6 core, it was -- it's a company that does  
7 investigative work and it was the sort of  
8 second generation of Kroll, Inc. and run  
9 by Jeremy Kroll and Jules Kroll.

10 Q. So the K in K2 stands for Kroll?

11 A. I believe it does, yes.

12 Q. Okay. Have you ever been  
13 licensed in any state as a private  
14 investigator or private detective?

15 A. No, I have not.

16 Q. I'm sorry, do you have something  
17 else to say?

18 A. I was just going to say in my  
19 work at K2 Intelligence and at QRI, I  
20 worked under the license of the  
21 investigative firm.

22 Q. So the firm itself holds the  
23 license as opposed to the individuals  
24 within the firm?

25 A. Correct, unless we're doing work

1 LINEHAN

2 in a state where we don't hold a license,  
3 then we actually hire a private  
4 investigator in that state who is  
5 licensed, and that private investigator's  
6 license covers our work there.

7 Q. Could you describe in general the  
8 type of investigative work you did while  
9 you were employed by K2 Intelligence?

10 A. Sure. I can speak generally  
11 about it. I came to K2 as an employee in  
12 the business intelligence and  
13 investigations group, and there I engaged  
14 in various kinds of corporate  
15 investigations mostly, some work with our  
16 private client services group doing  
17 cyber-related investigative work.

18 And then I was promoted to  
19 managing director and head of construction  
20 and real estate services where I ran their  
21 construction and real estate services  
22 practice which, as I said before, was  
23 mainly engaged in construction monitoring.

24 Q. Did you engage in that position  
25 in what I would call field work, going to



1 LINEHAN

2 but we generally refer them to QRI.

3 Q. Have you been retained by any  
4 party or counsel in this case?

5 A. We were retained, QRI was  
6 retained by Mr. Frank's firm in this case.

7 Q. When was it retained?

8 A. It was either January or  
9 February. I'm not sure of the exact date.

10 Q. Did QRI and Mr. Frank's firm  
11 enter into a written retainer agreement?

12 A. I believe they did but I did  
13 not -- I was not a part of the  
14 negotiations so I don't know for sure.

15 Q. Did you sign any such agreement?

16 A. I did not personally, no.

17 Q. Did you ever see any such  
18 agreement?

19 A. I have not seen it, no.

20 Q. Do you have knowledge of the  
21 terms of the agreement as far as  
22 compensation to QRI is concerned?

23 A. I can speculate but I won't --  
24 I'm familiar with engagement, with  
25 engagement terms generally at QRI but I

1 LINEHAN

2 MR. DEUTSCH: It's not  
3 privileged. It's not an  
4 attorney/client privileged  
5 communication which is what you're  
6 talking about. The assignment that  
7 you give to an investigator telling  
8 them to go out and do something is not  
9 part of the mental impressions or case  
10 assessment of an attorney. And if his  
11 declaration or his live testimony were  
12 to be given, it's a perfectly proper  
13 question to say what were you assigned  
14 to do before you ask him what he did.  
15 So --

16 MR. FRANK: You asked him what  
17 his understanding of what he was asked  
18 to do. If you want to ask him what he  
19 was asked to do, I would not object.

20 MR. DEUTSCH: Okay. It's really  
21 a form objection. All right, I'll  
22 take that correction.

23 BY MR. DEUTSCH:

24 Q. Mr. Linehan, what did Mr. Frank  
25 tell you to do as an investigator in this

1 LINEHAN

2 matter?

3 A. He told me to go to three  
4 convenience store locations in New Jersey  
5 and to make purchases of various tobacco  
6 products, to take pictures of the outside  
7 of the location and some pictures of the  
8 inside of the location, and then to keep  
9 the tobacco products and get an itemized  
10 receipt and send those all back to him and  
11 that was the assignment.

12 Q. Do you live in New Jersey?

13 A. I do not.

14 Q. Is your place of business in  
15 New Jersey?

16 A. No, it is not.

17 Q. Can we go to Exhibit 1, please?  
18 That's the declaration. Can we go to the  
19 first page? Could we go to paragraph 2  
20 which splits in two pages?

21 MR. FRANK: I'm sorry to  
22 interrupt. Mr. Linehan also has his  
23 own copy of his declaration. Can he  
24 refer to that?

25 MR. DEUTSCH: Absolutely. This

1 LINEHAN

2 Q. Do you know why you bought cigars  
3 on that occasion at that gas station other  
4 than the Cohiba brand cigar?

5 A. Mr. Frank gave me additional  
6 instructions --

7 MR. FRANK: Objection. Can you  
8 read back the question? I'm sorry.

9 (Record read.)

10 MR. FRANK: I'm going to object  
11 and direct the witness not to answer  
12 on the basis of work product to the  
13 extent that his understanding is based  
14 on any strategic decisions in the  
15 case.

16 MR. DEUTSCH: I'm going back to  
17 my question.

18 BY MR. DEUTSCH:

19 Q. I asked you do you know why you  
20 bought cigars on that occasion at that gas  
21 station other than the Cohiba brand cigar  
22 and you were about to answer. I'll phrase  
23 it a different way.

24 Did Mr. Frank instruct you to buy  
25 cigars other than Cohiba cigars during

1 LINEHAN

2 this investigation?

3 A. Yes.

4 Q. Did he give you a description of  
5 the other cigars you were to purchase  
6 other than the Cohiba brand cigars?

7 A. He did but I don't recall the  
8 exact description.

9 Q. Did he give you specific brand  
10 names to purchase?

11 A. Yes.

12 Q. And were those brand names  
13 Swisher Sweets, Black & Mild and Dutch  
14 Masters?

15 A. I believe so, yes.

16 Q. And, in fact, since you have your  
17 declaration in front of you, you bought  
18 the same -- I'm sorry. At the -- I'm  
19 going to go into this in more detail but  
20 at the second store you visited, you  
21 bought Dutch Masters and Black & Mild and  
22 at the third store you visited you bought  
23 Swisher Sweets, Dutch Masters and Black &  
24 Mild; is that correct?

25 A. That is correct.

LINEHAN

C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NASSAU )

I, CATHI IRISH, a Registered Professional Reporter, Certified Realtime Reporter, and Notary Public within and for the State of New York, do hereby certify:

That CHARLES LINEHAN, the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of April, 2021.



-----  
CATHI IRISH, RPR, CRR, CLVS

# **Exhibit 15**

IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE  
BEFORE THE  
TRADEMARK TRIAL AND APPEALS BOARD

In the matter of Trademark Registration  
No. 1147309

For the mark COHIBA

Date registered: February 17, 1981

-and-

In the matter of Trademark Registration  
No. 1898273

For the mark COHIBA

Date Registered: June 6, 1995

-----

EMPRESA CUBANA DEL )  
TABACO, d.b.a. )  
CUBATABACO, )  
Petitioner, )

vs.

GENERAL CIGAR CO., INC. )  
and CULBRO CORP., )  
Respondents. )

-----

) Cancellation  
) No. 92025829  
)

REMOTE CROSS-EXAMINATION DEPOSITION OF  
SUSAN BAILEY

TAKEN UNDER PROTEST BY RESPONDENT

Montclair, New Jersey

Friday, April 2, 2021

Reported By:

CATHI IRISH, RPR, CRR, CLVS



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April 2, 2021

12:11 p.m.

Remote deposition of SUSAN  
BAILEY, with all participants  
appearing via videoconference, before  
Cathi Irish, a Registered Professional  
Reporter, Certified Realtime Reporter,  
and Notary Public of the State of  
New York.

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A P P E A R A N C E S:

RABINOWITZ BOUDIN STANDARD KRINSKY  
& LIEBERMAN

Attorneys for Petitioner

45 Broadway  
Suite 1700  
New York, New York 10006

BY: LINDSEY FRANK, ESQ.

DLA PIPER LLP (US)

Attorneys for Respondents

2000 Avenue of the Stars  
Suite 400 North Tower  
Los Angeles, California 90067

BY: ANDREW L. DEUTSCH, ESQ.

ALSO PRESENT:

Erik Nelson, Veritext Concierge

1 BAILEY

2 Cubatabaco has submitted as rebuttal  
3 evidence in this case.

4 Did you write this declaration?

5 A. I participated in the -- in  
6 reviewing and contributing to it but I did  
7 not write it.

8 Q. Okay. So if we go to page --  
9 this first page, paragraph 2 A, you state  
10 that as more fully described below, the  
11 searches that you conducted on the  
12 Internet and other actions you describe in  
13 the declarations showed, "a. Several  
14 instances of actual confusion by U.S.  
15 consumers between the General Cigar Cohiba  
16 cigar and the Cuban Cohiba cigar, see  
17 paragraphs 3-10 below."

18 Do you see that on the first  
19 page?

20 A. I do.

21 Q. Have you had any training in the  
22 law of actual confusion in trademark law?

23 A. No, I have not.

24 Q. Do you know what the legal  
25 standard is for actual confusion in

1 BAILEY

2 trademark law?

3 A. The legal standard? I do not  
4 know that.

5 Q. Do you know --

6 A. I understand confusion but I'm  
7 assuming because of the actual, that there  
8 is a legal but I don't know. I'm not  
9 aware of that.

10 Q. Do you know, have you ever read  
11 any precedence of the trademark trial and  
12 appeal board dealing with actual  
13 confusion?

14 A. I have not.

15 Q. When this was drafted, did you  
16 write these words, "Several instances of  
17 actual confusion by U.S. consumers"?

18 A. I did not write those.

19 Q. That was written by a lawyer at  
20 Rabinowitz Boudin; is that correct?

21 A. That is correct.

22 Q. And that is that lawyer's legal  
23 conclusion rather than facts that you  
24 observed in the course of the activities  
25 described in your declaration; is that

1 BAILEY

2 correct?

3 MR. FRANK: Objection.

4 BY MR. DEUTSCH:

5 Q. You can answer.

6 A. Well, I don't -- I can't answer  
7 that with any knowledge. What I did on  
8 this declaration was I was directed to go  
9 to the -- to websites, certain websites  
10 and to download information, so that's  
11 what I can testify to today.

12 Q. You don't know whether any of the  
13 information you discovered as part of the  
14 searches you say you did are evidence of  
15 actual confusion as that term is  
16 understood in the law; correct?

17 MR. FRANK: Objection.

18 THE WITNESS: I can say that they  
19 in my opinion represent confusion but  
20 I've already explained about actual  
21 confusion and my knowledge of it.

22 BY MR. DEUTSCH:

23 Q. Again, just so it's clear, you  
24 don't know what the legal standard for  
25 confusion is, do you?

1 BAILEY

2 MR. FRANK: Objection, asked and  
3 answered.

4 BY MR. DEUTSCH:

5 Q. You can answer.

6 A. Yes, I have stated that. I don't  
7 know the legal terminology for actual  
8 confusion.

9 Q. So the wording several instances  
10 of actual confusion is not your wording,  
11 it's someone else's wording; correct?

12 MR. FRANK: Objection.

13 THE WITNESS: I've stated that I  
14 did not write those words.

15 BY MR. DEUTSCH:

16 Q. Okay. That's good enough for me.  
17 Can we go down to paragraph 3 of the  
18 declaration -- I guess I can do it, sorry.

19 We're going to go to paragraph 3  
20 of your declaration. Let's find it.

21 Here we are, paragraph 3. This  
22 appears on page 4 of your declaration and  
23 there's a large Roman numeral I and the  
24 phrase "Instances of Actual Confusion."

25 Did you write those words?

1 BAILEY

2 A. I did not.

3 Q. Do you know whether the  
4 statements that are made following those  
5 words, in fact, evidence actual confusion  
6 as that term is understood in law?

7 MR. FRANK: Objection.

8 BY MR. DEUTSCH:

9 Q. You can answer.

10 A. I consider them to be confusing  
11 and --

12 Q. Do you have any -- let me ask you  
13 this: Do you smoke cigars?

14 A. Do I smoke them?

15 Q. Yes.

16 A. I have smoked them. I don't on a  
17 regular basis, no.

18 Q. Would you consider yourself  
19 knowledgeable about cigar brands?

20 A. No.

21 Q. Would you consider yourself  
22 knowledgeable as to the trademarks that  
23 are used by cigar companies for their  
24 cigars?

25 MR. FRANK: Objection.

1 BAILEY

2 not read all of the other ones.

3 Q. So is it accurate to say that  
4 someone in the Rabinowitz Boudin firm said  
5 print out the Timothy C. review and then  
6 you went ahead and printed the document  
7 that's been marked as Exhibit 2 to your  
8 Exhibit 2 in this deposition?

9 A. I think I explained the process I  
10 would have done this.

11 Q. Can you answer my question,  
12 Ms. Bailey? This will take a long time if  
13 we do it this way and I'm trying not to.  
14 Were you told by someone at Rabinowitz  
15 Boudin to print out the Timothy C. review?

16 A. No, not that I recall.

17 Q. Did you find the Timothy C.  
18 review and bring it to the attention of  
19 lawyers at Rabinowitz Boudin?

20 A. I did not.

21 Q. How did it come that you printed  
22 out the Timothy C. review, who told you to  
23 do that?

24 A. Lindsey Frank.

25 Q. And then you took the actions



1 BAILEY

2 necessary and that resulted in the  
3 printing of this exhibit; correct?

4 A. That's correct.

5 Q. You didn't read any of the other  
6 reviews then that appear on this exhibit;  
7 correct?

8 A. I was not asked to do that.

9 Q. And you did not do it; correct?

10 A. I can't say with all certainty  
11 that when I was looking at this that I  
12 didn't happen to read another one, but  
13 that was not part of what I was asked to  
14 do.

15 Q. But you weren't asked to search  
16 for reviews that to your mind evidenced  
17 confusion among people who posted comments  
18 on the Cigar International website;  
19 correct?

20 A. That's correct.

21 Q. And of the 250 reviews that we  
22 previously saw referenced at the top, you  
23 recall reading any others except the  
24 Timothy C. review?

25 MR. FRANK: Objection.

1 BAILEY

2 THE WITNESS: As I stated, I may  
3 have glanced at other ones but I  
4 couldn't tell you which they were at  
5 this time.

6 BY MR. DEUTSCH:

7 Q. Do you know if any of those other  
8 reviews evidenced confusion on the part of  
9 the person who was posting the review?

10 A. I was not reading them for that.  
11 And I'm also not stating that I read them.  
12 I may have glanced at one or two but I was  
13 not looking for them.

14 Q. Ms. Bailey, again I'm going to  
15 ask you to please answer my question which  
16 you're not quite doing so that we can move  
17 this along.

18 A. I believe I have answered your  
19 question.

20 Q. I'm going to rephrase it and I  
21 believe this is acceptable of a yes or a  
22 no answer.

23 A. Okay.

24 Q. Are you aware of any other  
25 reviews posted to Cigar International

1 BAILEY

2 which evidence actual confusion by the  
3 person who posted the review to Cigar  
4 International other than this Timothy C.  
5 review, yes or no?

6 A. I am not, no.

7 Q. Okay. Did you do any research  
8 into whether Timothy C. is a United States  
9 resident? Let me withdraw that.

10 Other than what you state here,  
11 which is that Timothy C. undoubtedly is a  
12 person located in the United States, as  
13 Cigars International only sells to persons  
14 located in the United States, did you do  
15 any other research into Mr. Timothy C?

16 A. No, I did not.

17 MR. FRANK: Objection.

18 BY MR. DEUTSCH:

19 Q. Let's move on to paragraph 4 of  
20 Exhibit 1 in this declaration which is  
21 your declaration. Can we go to paragraph  
22 4 of Exhibit 1 in this declaration? I  
23 guess I can do that. I actually know how  
24 to do that now. I'm going to enlarge this  
25 a little bit, please.

1 BAILEY

2 Q. Were you directed by Mr. Frank to  
3 print out this cigar forum discussion that  
4 appears referenced at paragraph 4 of your  
5 declaration?

6 A. Yes, I was.

7 Q. Okay, now if you can go --  
8 actually let me do this.

9 I'm looking at paragraph 6 of  
10 your declaration. There's a statement  
11 here, anyone on the Internet can view  
12 these comments; however, only users  
13 registered and located in the United  
14 States can post comments.

15 Did you determine that to be a  
16 factor, were you told that was a fact?

17 MR. FRANK: Objection.

18 THE WITNESS: Where did you read  
19 that from?

20 BY MR. DEUTSCH:

21 Q. Do you see the arrow?

22 A. Okay.

23 Q. Where my arrow is or my pointer  
24 is. Starting with the words "Anyone on  
25 the Internet" and going down to "post

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C E R T I F I C A T E  
STATE OF NEW YORK       )  
   : ss.  
COUNTY OF NASSAU       )

I, CATHI IRISH, a Registered  
Professional Reporter, Certified Realtime  
Reporter, and Notary Public within and for  
the State of New York, do hereby certify:

That SUSAN BAILEY, the witness whose  
deposition is hereinbefore set forth, was  
duly sworn by me and that such deposition  
is a true record of the testimony given by  
the witness.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 15th day of April, 2021.



CATHI IRISH, RPR, CRR, CLVS